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CHAPTER Env-Wt 100 ORGANIZATIONAL RULES

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 100 filed under Document #8340, effective 4-25-05, or under prior documents that were still in effect, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 101 DEFINITIONS

REVISION NOTE:

Document #5536, effective 12-23-92, made extensive changes to the wording and numbering of rules containing definitions in Part Wt 101. Document #5536 supersedes all prior filings for the sections in this part and Parts Wt 102 and Wt 103. Document #5536 contained many definitions which amended or incorporated definitions in Part Wt 601, which was subsequently repealed by Document #5551, effective 1-5-93.

The prior filings for former Part Wt 101 included the following documents:

- #2271, eff 1-10-83
- #2923, eff 12-10-84
- #2924, eff 12-11-84
- #3072, eff 7-26-85
- #4039, eff 4-10-86
- #4292, eff 7-13-87
- #4386, eff 3-10-88
- #5028, eff 12-20-90

Please note that some of the rules in former part Wt 101 had EXPIRED between 12-11-90 and 12-20-90.

Env-Wt 101.01 "Abandoned" means the failure, for a period of 5 years, to maintain an existing structure in a condition so that it is functional and intact.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340,
eff 4-25-05 (See Revision Note at chapter heading for Env-Wt
100)

Env-Wt 101.02 "Abutter" means any person who owns property immediately adjacent and contiguous to the property on which the project will take place. This does not include those properties across a public road. An abutter includes an owner of any flowage rights on or immediately adjacent to the property on which the project will take place. If the project is located on waterfront or another area which by its configuration would cause the project to affect non-contiguous properties, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than one-quarter mile from the limits of the proposed project.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss by #6199, *eff 2-29-96*; ss by #6498-A,
eff 4-23-97; ss by #8340, *eff 4-25-05* (See Revision Note at
chapter heading for Env-Wt 100)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.03 "Accessory docking structure" means a structure supplementary to a dock or wharf that assists in securing watercraft or protecting the dock or watercraft such as, for example, an ice cluster, piling, boat lift, or canopy.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.04 "Activity sponsor" means an entity, including, but not limited to a new hampshire department of transportation (NHDOT) maintenance district, a municipality, or the maintenance department of a railway or private roadway, proposing routine roadway or railway maintenance activities within jurisdictional surface waters and wetlands, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance.

Source. #7855, *eff 3-21-03*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.05 "Applicant" means a person having an interest in the land on which a project is to be located that is sufficient for the person to legally proceed with the project who has applied for a permit, permit modification, waiver, or other approval pursuant to Env-Wt 200 through Env-Wt 800, or the duly-authorized agent of such a person.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.06 "Bank" means the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Env-Wt 301.01 indicates a change from wetland to upland.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss by #6199, *eff 2-29-96*; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.07 "Beach" means a sloping shore of a surface water body consisting of sand, gravel, or cobble extending from adjacent upland/wetland to or in a surface water body.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.08 "Boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.09 "Boat slip" means "boat slip" as defined by RSA 482-A:2,VIII, namely:

"(a) On water bodies over 10,000 acres, means a volume of water 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high water and located adjacent to a structure to which a watercraft may be secured.

(b) On water bodies of 10,000 acres or less, a volume of water 20 feet long, 6 feet wide, and 3 feet deep as measured at normal high water mark and located adjacent to a structure to which a watercraft may be secured."

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.10 "Bog" means a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.11 "Breakwater" means a structure extending generally perpendicular from the shore into surface waters of the state that is designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.12 "Bulkhead" means a vertical retaining wall built along a waterfront to contain fill.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, *eff 12-21-96*, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*

Env-Wt 101.13 "Bureau" means the wetlands bureau within the water division of the department of environmental services.

Source. #6404, INTERIM, *eff 12-21-96*, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.14 "Canopy" means a seasonal open structure with a flexible fabric roof not able to withstand the expected snow load and without side walls, which is erected to shelter watercraft during the boating season.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.15 "Commercial use of structures" means use with compensation or other consideration to the owner of the structure(s). This includes but is not limited to, the transfer, lease, sale, rent, or other temporary or permanent conveyance, of an interest in such a structure when such action(s) is not also applied to the property to which it is appurtenant.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.16 "Commissioner" means the commissioner of the department of environmental services.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.17 "Compensatory mitigation" means creation of a new wetland, restoration of a wetland, or preservation of land to offset the impact of a project by replacing or partially replacing wetlands functions and values lost due to the project, or by substituting the value added to a wetland or wetland system for the functions or values lost.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.18 "Conservation area" means an area of land protected by a conservation easement that restricts the future use of the property in perpetuity.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.19 "Conservation commission" means a municipal body established under RSA 36-A with statutory standing before the department under RSA 482-A:11, III, which provides a local source of assistance to both the department and applicants.

Source. (See Revision Note at chapter heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.20 "Continued agricultural use" means that a wetland has been used as cropland or pasture with sufficient frequency, and sufficient recentness, that the land has not reverted to a scrub-shrub wetland, emergent marsh, or forested wetland.

Source. #5739, eff 11-23-93; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.21 "Corduoy road" means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

Source. (See Revision Note at chapter heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.22 "Council" means the wetlands council established by RSA 21-O:5-a.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.23 "Cribs" means an enclosure or framework of timber or prefabricated concrete which is securely fastened together and filled with stone ballast and which is typically used to support a structure in the water.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.24 "Cropland" means land used to produce plant species adapted for harvest, alone or in rotation with grasses and legumes, and includes areas dedicated to vegetables, grain, hay, pasture, fodder, sod, nursery stock, orchards and similar produce.

Source. #5739, eff 11-23-93; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.25 "Department" means the department of environmental services.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.26 "Design fetch" means the average of at least 11 radials evenly distributed across a 30 degree arc.

Source. #9094, *eff 2-23-08*

Env-Wt 101.27 "Developed upland" means upland areas within the tidal buffer zone where:

- (a) The natural soil and vegetation characteristics over a majority of the lot have been legally altered and have not returned to a natural state; and
- (b) The area contains at least 2 of the following criteria:
 - (1) Filled or excavated land;
 - (2) Paved or graded land in use as a parking lot or a roadway;
 - (3) A lot occupied by residential or commercial buildings; or
 - (4) A lot which is surrounded by residentially or commercially developed lots on at least 2 sides.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.28 "Director" means the director of the water division within the department.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.29 "Dock" as a noun or "docking facility" means a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.30 "Dock" as a verb means to secure watercraft adjacent to a structure.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.31 "Dolphin" means a rigid permanent structure installed in a beach, bank, or the bottom of a water body, for such purposes as securing watercraft or protecting an area from ice floes. Dolphins can be constructed with piles, pile clusters, caissons, concrete pillars, or structures of a similar nature.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

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Env-Wt 101.32 "Drainage swale" means a shallow vegetated trough where water flows during runoff and which is insufficient to create a defined channel or to maintain wetlands vegetation.

Source. (See Revision Note at chapter heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05*

Env-Wt 101.33 "Dredge" means to dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland, a surface water body, or other area within the department's jurisdiction.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.34 "Dredge spoils" means material removed as the result of dredging.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.35 "Dune vegetation" means vegetation that is commonly found in sand dunes and includes but is not limited to:

- (a) Ammophila breviligulata (American Beach Grass);
- (b) Arenaria peploides (Seabeach Sandwort);
- (c) Artemesia stellarina (Dusty Miller);
- (d) Euphorbia polygonifolia (Seaside Spurge);
- (e) Hudsonia tomentosa (Beach Heather);
- (f) Hudsonia ericoides (Beach Heather);
- (g) Lathyrus japonica (Beach Pea);
- (h) Myrica pennsylvanica (Bayberry);
- (i) Prunus maritima (Beach Plum); and
- (j) Rosa rugosa (Salt Spray Rose).

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.35) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.36 "Erosion control" means the utilization of methods to contain soil particles and to prevent them from being displaced or washed down slopes by rainfall or run-off and include, but are not limited to:

- (a) Seeding;
- (b) Mulching; or
- (c) Using haybales, siltation fences, or impermeable material.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff* 4-23-97; ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.36) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.37 "Excavate" means to dig, remove, or form a cavity or a hole in an area within the department's jurisdiction.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff* 4-23-97; ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.37) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.38 "Fetch" means the length of uninterrupted water surface over which the wind blows in a constant direction.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, *eff* 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff* 4-23-97; ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.38) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.39 "Fill" as a noun means any rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity.

Source. #7071, *eff* 8-13-99; ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.39) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.40 "Fill" as a verb means to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within the jurisdiction of the department.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6498-A, *eff* 4-23-97; ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.40) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.41 "Flats" means relatively level landforms composed of unconsolidated mineral and organic sediments, usually mud or sand, that are alternately flooded and exposed by the tides and that usually are continuous with the shore.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, eff 4-23-97; ss and moved by #8340, eff 4-25-05 (from Env-Wt 101.41) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.42 "Float" means a platform anchored near a shoreline for watercraft, commercial or recreational use that is supported by buoyancy devices.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97 (from Env-Wt 101.37); ss and moved by #8340, eff 4-25-05 (from Env-Wt 101.42) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.43 "Functional assessment" means an evaluation of a wetland to determine the functions and values it performs within the context of the broader landscape for the purpose of establishing compensatory mitigation under Chapter Env-Wt 800.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, eff 4-23-97 (from Env-Wt 101.38); ss and moved by #8340, eff 4-25-05 (from Env-Wt 101.43) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.44 "Grandfathered status" means that a structure:

(a) Was in place before permit jurisdiction under RSA 482-A:3, I or its predecessor statute, RSA 483-A:1, I, took effect, which for areas in or adjacent to tidal waters means June 22, 1967 and for all other jurisdictional areas means July 2, 1969;

(b) Has remained unaltered in location, size and configuration; and

(c) Has not been abandoned.

Source. #8053, eff 2-28-04; ss and moved by #8340, eff 4-25-05 (from Env-Wt 101.44) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.45 "Highest observable tide line" means a line defining the farthest landward limit of tidal flow, not including storm events, that can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks farther flow of the tide.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.39); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.45) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.46 "Hydric soil" means soil that is saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.40); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.46) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.47 "Hydrophyte" means a plant adapted for life in water or saturated soils.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6199, *eff 2-29-96*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.41); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.47) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.48 "Intermittent stream" means a stream that flows for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.42); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.48) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.49 "Jetty" means a structure extending generally perpendicular to the shore into tidal waters or a surface water body and designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.43); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.49) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.50 "Jurisdiction" means the regulatory authority under RSA 482-A.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.44); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.450) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.51 "Jurisdictional area" means an area that is subject to regulation under RSA 482-A, as described therein.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.45); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.51) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.52 "Maintenance of structures" means the repair or replacement of existing legal structures.

Source. #8053, *eff 2-28-04*; ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.52) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.53 "Major docking system" means a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boat slips, including those previously existing and proposed.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.46); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.53) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.54 "Major project" means a project of such size and scope that it has the potential to create a significant impact on wetlands or waters of the state, pursuant to Env-Wt 303.02.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.47); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.54) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.55 "Marina" means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6199, *eff 2-29-96*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.48); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.55) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.56 "Marsh" means a wetland:

- (a) That is distinguished by the absence of trees and shrubs;
- (b) Dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and
- (c) Where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.49); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.56) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.57 "Minimum impact project" means a minor project that by virtue of its size and nature is likely to have a negligible impact by itself or in the aggregate pursuant to Env-Wt 303.04, provided adequate measures are employed to protect the environment.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.50); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.57) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.58 "Minor project" means a project of such size, scope or nature that it has the potential of having more than a negligible impact upon wetlands or waters of the state or other areas within the department's jurisdiction pursuant to Env-Wt 303.03, unless adequate measures are employed to protect the environment.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.51); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.58) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.59 "Mooring" means a temporary, removable or permanent device, such as a buoy, to which watercraft can be secured.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.52); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.59) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.60 "Navigable frontage" means the frontage that can be accessed by a boat having at least a 6 foot beam and 2 foot draft at normal high water.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss by #6404, INTERIM, *eff 12-21-96*, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97* (from Env-Wt 101.53); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.60) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.61 "Nontidal wetland" means a wetland not subject to periodic inundation by tidal waters.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Env-Wt 101.54); ss and moved by #8340, *eff* 4-25-05
(from Env-Wt 101.61) (See Revision Note at chapter heading
for Env-Wt 100)

Env-Wt 101.62 "Normal high water" for lakes or ponds means the full lake elevation as determined by the director.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Env-Wt 101.55); ss and moved by #8340, *eff* 4-25-05
(from Env-Wt 101.62) (See Revision Note at chapter heading
for Env-Wt 100)

Env-Wt 101.63 "Open pile construction" means piles installed far enough apart to allow free flow and passage of water and marine life.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Env-Wt 101.56); ss and moved by #8340, *eff* 4-25-05
(from Env-Wt 101.63) (See Revision Note at chapter heading
for Env-Wt 100)

Env-Wt 101.64 "Pasture" means a form of cropland devoted to the production of native or introduced forage which is normally harvested by grazing.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss by #6404, INTERIM, *eff* 12-21-96,
EXPIRED: 4-20-97

New. #6498-A, *eff* 4-23-97 (from Env-Wt 101.57); ss and
moved by #8340, *eff* 4-25-05 (from Env-Wt 101.64) (See
Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.65 "Permanent dock" means a dock in which the dock, its supports, or both are designed to remain in the bank or surface water bottom throughout the non-boating season. Permanent docks can be supported by piles or cribs in the water or can be cantilevered from the bank.

Source. (See Revision Note at part heading for Env-Wt 101)
#5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97
(from Env-Wt 101.58); ss and moved by #8340, *eff* 4-25-05
(from Env-Wt 101.65) (See Revision Note at chapter heading
for Env-Wt 100)

Env-Wt 101.66 "Permit action" means approval, approval with conditions, partial approval, or denial of an application for a permit pursuant to RSA 482-A.

Source. #5739, *eff* 11-23-93; ss and moved by #6498-A, *eff*
4-23-97 (from Env-Wt 101.59); ss and moved by #8340, *eff*
4-25-05 (from Env-Wt 101.66) (See Revision Note at chapter
heading for Env-Wt 100)

Env-Wt 101.67 "Pier" means a docking structure built generally perpendicular to the shore intended for securing watercraft and/or for discharging and loading passengers, freight, and other goods.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.60); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.67) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.68 "Pile" means a long, slender column of timber, steel, concrete, stone, or other rigid material driven or jetted into a beach, bank or bottom of a water body.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.61); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.68) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.69 "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.62); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.69) (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.70 "Preservation" means the permanent protection of wetland and upland areas using legal and physical mechanisms so that the resource remains in a natural or undeveloped condition.

Source. #8053, *eff 2-28-04*; ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.70) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.70)

Env-Wt 101.71 "Primary vernal pool indicators" means the presence or physical evidence of breeding by marbled salamander, wood frog, spotted salamander, jefferson-blue spotted salamander complex, or fairy shrimp.

Source. #9131, *eff 4-19-08*

Env-Wt 101.72 "Public hearing" means a public proceeding conducted for the purpose of acquiring information that will be considered in evaluating a proposed permit, a removal/restoration action, or both, and which affords the public the opportunity to present its views, opinions and information.

Source. #8053, *eff 2-28-04*; ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.71) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.71)

Env-Wt 101.73 "Repair" means the restoring of an existing legal structure by partial replacement of worn, broken, or unsound parts.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.63); ss and moved by #8340, *eff 4-25-05*

(from Env-Wt 101.72) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.72)

Env-Wt 101.74 "Replacement" means the substitution of a new structure for an existing legal structure with no change in size, dimensions, location, configuration, construction, or which conforms in all material aspects to the original structure.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.65); ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.73) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.073)

Env-Wt 101.75 "Retaining wall" means a structure constructed generally parallel to and against the shoreline to sustain a bank or prevent erosion.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.66); ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.74) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.74)

Env-Wt 101.76 "Revetment" means a sloped facing of layered stone, concrete, or other hard material built to protect a bank or embankments by dissipating wave energy.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.67); ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.75) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.75)

Env-Wt 101.77 "Rip-rap" means cobble-sized and boulder-sized rocks placed on a bank to prevent erosion.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.68); ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.76) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.76)

Env-Wt 101.78 "Roadway" means a legally existing structure that is designed, constructed, or improved to provide and support safe passage for public or private vehicular traffic.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.69); ss and moved by #8340, *eff* 4-25-05 (from Env-Wt 101.77) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.77)

Env-Wt 101.79 "Rocker box" means a mechanical device used to separate gold and other minerals from lighter sediments.

Source. #7855, *eff 3-21-03*; ss a (See Revision Note at chapter heading for Env-Wt 100) and moved by #8340, *eff 4-25-05* (from Env-Wt 101.78)

Env-Wt 101.80 "Sand dune" means "sand dune" as defined by RSA 482-A:2, VII.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.70); ss and moved by #8340, *eff 4-25-05* (from Env-Wt 101.34) (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.79)

Env-Wt 101.81 "Seasonal dock or seasonal structure" means a dock or any other structure that is designed and constructed such that the structure and all associated supports can be completely removed from the surface water and its bed during the non-boating season, including but not limited to pipe docks, floating docks, and watercraft lifts.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.71); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100); ss and moved by #9094, *eff 2-23-08* (from Env-Wt 101.80)

Env- Wt 101.82 "Secondary vernal pool indicators" means physical evidence used by wildlife biologists or certified wetlands scientists who are familiar with vernal pool habitats as evidence of the presence of a vernal pool, if primary vernal pool indicators are absent and other vernal pool characteristics suggest vernal pool habitat. Secondary vernal pool indicators include, but are not limited to, caddisfly larvae and cases (Limnephilidae, Phyrganeidae, or Polycentropodidae), clam shrimp and their shells (Laevicaudata, Spinicaudata), fingernail clams and their shells (Sphaeriidae), aquatic beetle larvae (Dytiscidae, Gyrinidae, Halipilidae, and Hydrophilidae), dragonfly larvae and exuviae (Aeshnidae, Libellulidae), spire-shaped snails and their shells (Physidae, Lymnaeidae), flat-spire snails and their shells (Planorbidae), damselfly larvae and exuviae (Coenagrionidae, Lestidae), and true fly larvae and pupae (Cuculidae, Chaoboridae, and Chironomidae).

Source. #9131, *eff 4-19-08*

Env-Wt 101.83 "Sedimentation controls" means silt fences, hay bales, and other methods utilized to trap water-borne sediment and provide protection against erosion until properly installed erosion controls can take effect.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.72); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.81)

Env-Wt 101.84 "Shoal" means a portion of a water body where the bottom is usually submerged, with insufficient depth to allow for safe navigation for some watercraft.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.73); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.82)

Env-Wt 101.85 "Shoreline frontage" means the average of the distances of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the normal high water line.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.74); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.83)

Env-Wt 101.86 "Significant environmental impact" means that a proposed project is classified as a major project in accordance with Env-Wt 303.02 and the jurisdictional resources to be impacted by the proposed project are an important physical component of a wetland ecosystem or coastal zone ecosystem.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.75); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.84)

Env-Wt 101.87 "Siltation curtain" means an impervious barrier erected to prevent silt and sand and/or fines from being washed into a wetland, surface water body or other area of concern.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97* (from Env-Wt 101.76); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.85)

Env-Wt 101.88 "Sluice" means an inclined trough to conduct water to a rocker box for separating gold and other minerals from lighter sediments.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.77); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.86)

Env-Wt 101.89 "Structure" means "structure" as defined by RSA 482-A:2, IX.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.78); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.87)

Env-Wt 101.90 "Substantial public interest" means where the jurisdictional resources to be impacted by the proposed project are of special value from a local, regional, or state perspective and issues are raised pursuant to RSA 482-A:1.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.79); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.88) (from Env-Wt 101.91)

Env-Wt 101.91 "Surface water body" or "surface waters" means those portions of waters of the state, as defined by RSA 482-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, ponds and tidal waters.

Source. #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97* (from Env-Wt 101.80); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.89)

Env-Wt 101.92 "Swamp" means a wetland that is dominated by trees and/or shrubs.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.81); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.90)

Env-Wt 101.93 "Tidal buffer zone" means the area extending landward 100 feet from the highest observable tide line. This area can contain wetlands, transitional areas, and natural and developed upland areas.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.82); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 101.94 "Tidal flat" means a relatively level landform composed of unconsolidated mineral and organic sediments, usually continuous with the shore, and that is alternately flooded and exposed by the tides.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.83); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.92)

Env-Wt 101.95 "Tidal flushing" means the influx and outflow of water associated with the ebb and flow of the tide.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.84); ss by #8340, *eff 4-25-05* (See

Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.93)

Env-Wt 101.96 "Tidal wetland" means a wetland whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.85); ss by #8340, *eff* 4-25-05 (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.94)

Env-Wt 101.97 "Unnecessary hardship" means a hardship created by a special condition of the land which distinguishes it from other land in the same area. A hardship does not exist if it relates to the personal circumstances of the landowner rather than the land itself.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff* 4-23-97 (from Env-Wt 101.86); ss by #8340, *eff* 4-25-05 (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.95)

Env-Wt 101.98 "Upland" means an area of land that is not a jurisdictional area.

Source. #8053, *eff* 2-28-04; ss by #8340, *eff* 4-25-05 (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.96)

Env- Wt 101.99 "Vernal pool" means a surface water or wetland, including an area intentionally created for purposes of compensatory mitigation, which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which:

(a) Is not the result of on-going anthropogenic activities that are not intended to provide compensatory mitigation, including but not limited to:

- (1) Gravel pit operations in a pit that has been mined at least every other year; and
- (2) Logging and agricultural operations conducted in accordance with all applicable New Hampshire statutes and rules; and

(b) Typically has the following characteristics:

- (1) Cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year;
- (2) Forms in a shallow depression or basin;
- (3) Has no permanently flowing outlet;
- (4) Holds water for at least 2 continuous months following spring ice-out;
- (5) Lacks a viable fish population; and
- (6) Supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators.

Source. #9131, *eff 4-19-08*

Env-Wt 101.100 "Upland buffer" means an area of land that is contiguous to a jurisdictional resource and that contributes to the functions and values of that resource.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.97)

Env-Wt 101.101 "Watershed" means a geographical area in which all water drains to a given stream, lake, wetland, estuary, or ocean.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.98)

Env-Wt 101.102 "Weephole" means a small drainage opening used to allow proper drainage and prevent frost and ice damage to retaining structures.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.87); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.99)

Env-Wt 101.103 "Wetland" means "wetlands", as defined by RSA 482-A:2, X, namely "an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Wetlands include swamps, marshes, bogs and similar areas.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 *eff 12-23-92*; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.88); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.100)

Env-Wt 101.104 "Wetland creation" means the transformation of upland to wetland at a site where the upland was not created by human activity such as by filling or water diversion.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.101)

Env-Wt 101.105 "Wetland restoration" means the re-establishment of a filled, dredged, or drained wetland to its historic condition, so as to restore lost functions to the greatest extent practicable, by removal of fill, restoration of hydrology to the area, or by such other means as are necessary.

Source. #8053, *eff 2-28-04*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.102)

Env-Wt 101.106 "Wet meadow" means an herb-dominated area typically with non-woody vegetation less than 3 feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained soils as described by Env-Ws 1014.02.

Source. (See Revision Note at part heading for Env-Wt 101) #5536 eff 12-23-92; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.89); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.103)

Env-Wt 101.107 "Wharf" means a docking structure built generally parallel to the shore and used to secure watercraft and/or to discharge and load passengers, freight and other goods.

Source. #5739, eff 11-23-93; ss and moved by #6498-A, *eff 4-23-97* (from Env-Wt 101.90); ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100) (from Env-Wt 101.104)

PART Env-Wt 102 STATEMENT OF PURPOSE AND ACCESS TO FILES

Env-Wt 102.01 Purpose. The purpose of these rules is to support the finding of public purpose set forth in RSA 482-A:1. In addition, the department declares that the purpose of these rules shall be to afford the maximum degree of protection for the natural environment while allowing individual landowners the freedom to use and enjoy their land as is consistent with this public purpose.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note at chapter heading for Env-Wt 100)

Env-Wt 102.02 Access to Files. The files of the department are open to public inspection upon reasonable request during normal working hours. Information which is available for public inspection may be copied. The actual cost of producing copies shall be the fee charged for copies made by the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6498-A, *eff 4-23-97*; ss and moved by #8340, *eff 4-25-05* (from Env-Wt 102.03) (See Revision Note at chapter heading for Env-Wt 100)

PART Env-Wt 103 SOURCE OF AUTHORITY

Env-Wt 103.01 Statute Granting Authority.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5536, eff 12-23-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; rpld by #8340, *eff 4-25-05*

CHAPTER Env-Wt 200 RULES OF PRACTICE AND PROCEDURE

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 200 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 201 PURPOSE AND APPLICABILITY

Env-Wt 201.01 Purpose. The objective of these rules shall be to secure a just and speedy determination in every proceeding.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 201.02 Applicability. The rules of this chapter shall apply to hearings held by the department pursuant to RSA 482-A.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

PART Env-Wt 202 TYPES OF HEARINGS

Env-Wt 202.01 Permit Applications. The department shall conduct a hearing in accordance with Env-C 200 relative to non-adjudicative proceedings on a permit application:

(a) On its own initiative, when the department determines that a hearing would be beneficial to a decision due to the complexity of the issues involved; or

(b) As required by RSA 482-A:8, for projects:

(1) With a significant environmental impact on the resources protected by RSA 482, as defined by Env-Wt 101.83; or

(2) Of substantial public interest, as defined by Env-Wt 101.87.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 202.02 Reconsideration of Administrative Orders. The department shall conduct a hearing to reconsider an administrative order pursuant to Env-Wt 203.01.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; rpld by #6404, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 202.03 Reconsideration of Decisions on Permits. The department shall conduct a hearing to reconsider a permitting decision pursuant to Env-Wt 203.02.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; ss and moved by #8341, eff 4-25-05 (see Env-Wt 501.04) (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 202.04 Administrative Fine Hearings. The department shall conduct a hearing on a proposed administrative fine as provided in Env-C 601.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 202.05 Hearings on Proposed Rules. The department shall conduct hearings on proposed rules in accordance with RSA 541-A and Env-C 200 relative to non-adjudicative proceedings.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

PART Env-Wt 203 RECONSIDERATION

Env-Wt 203.01 Reconsideration of Administrative Orders.

(a) Pursuant to RSA 482-A:10, I, any person to whom an administrative order is issued who wishes to contest the order or any part of the order shall request the department to reconsider the order or any part of the order.

- (b) A request to reconsider an administrative order shall be filed in accordance with this section.
- (c) Pursuant to RSA 482-A:10, I, a request for reconsideration of an administrative order shall be filed within 20 days of the issuance of the order.
- (d) The person requesting reconsideration shall provide the following information:
 - (1) The name, mailing address, and daytime telephone number of each person requesting reconsideration;
 - (2) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
 - (3) A clear and concise statement of the facts upon which the department is expected to rely in granting relief;
 - (4) A clear and concise statement of the specific relief or ruling requested, such as whether the order should be rescinded in whole or in part or whether compliance dates should be changed;
 - (5) The number and date of the order which is the subject of the request, as shown on the first page of the order under the words "Administrative Order"; and
 - (6) Such other information as the person filing the request deems pertinent and relevant, including sworn written testimony and other evidence.
- (e) Upon receiving a request for reconsideration of an administrative order that meets the conditions of (c) and (d), above, the department shall determine whether a hearing would be beneficial to a thorough consideration of the issues raised in the request.
- (f) The department's determination shall be based on:
 - (1) The complexity of the issues; and
 - (2) Whether the information on which the department is being asked to rely in its reconsideration would only effectively be presented at a hearing.
- (g) If the department determines pursuant to (e) and (f), above, that a hearing would be beneficial, the department shall send written notification of the date and time at which a hearing will be held on the request to:
 - (1) The person requesting the reconsideration;
 - (2) The permit holder, if other than the person requesting reconsideration; and
 - (3) Any other person required by RSA 482-A:10, III to be notified.
- (h) Upon receiving a request for reconsideration of an administrative order that was not filed within the statutory period, the department shall send written notification to the person requesting the reconsideration that the request is denied because it was not timely filed.
- (i) Upon receiving a request for reconsideration of an administrative order that was filed within the statutory period but does not provide all of the information required by (d), above, the department shall send written notification to the person requesting the reconsideration of the information that is required to complete the request.

(j) The notification sent pursuant to (i) shall specify a deadline for providing the information, which shall be no sooner than 20 days from the date of the notification.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 203.02 Reconsideration of Permitting Decisions.

(a) Pursuant to RSA 482-A:10, I, any person aggrieved by a decision to issue or deny a permit under RSA 482-A:3 who wishes to contest the decision shall request the department to reconsider the decision.

(b) A request to reconsider a permitting decision shall be filed in accordance with this section.

(c) Pursuant to RSA 482-A:10, I, a request for reconsideration of a permitting decision shall be filed within 20 days of the issuance of the decision.

(d) The person requesting reconsideration shall provide the following information:

- (1) The name, mailing address, and daytime telephone number of each person requesting reconsideration;
- (2) A clear and concise statement of the reason(s) why the person believes the decision to be in error and how the person is adversely affected by the error(s);
- (3) A clear and concise statement of the facts upon which the department is expected to rely in granting relief;
- (4) A clear and concise statement of the specific relief or ruling requested, such as whether a permit that was denied should be issued or whether a permit that was issued should be rescinded or modified;
- (5) The number and date of the permit which is the subject of the request, as shown on the first page of the permit; and
- (6) Such other information as the person filing the request deems pertinent and relevant, including sworn written testimony and other evidence.

(e) Upon receiving a request for reconsideration of a permitting decision that meets the conditions of (c) and (d), above, the department shall determine whether a hearing would be beneficial to a thorough consideration of the issues raised in the request.

(f) The department's determination shall be based on:

- (1) The complexity of the issues; and
- (2) Whether the information on which the department is being asked to rely in its reconsideration would only effectively be presented at a hearing.

(g) If the department determines pursuant to (e) and (f), above, that a hearing would be beneficial, the department shall send written notification of the date and time at which a hearing will be held on the request to:

- (1) The person requesting the reconsideration;
- (2) The permit holder, if other than the person requesting reconsideration; and
- (3) Any other person required by RSA 482-A:10, III to be notified.

(h) Upon receiving a request for reconsideration of a permitting decision that was not filed within the statutory period, the department shall send written notification to the person requesting the reconsideration that the request is denied because it was not timely filed.

(i) Upon receiving a request for reconsideration of a permitting decision that was filed within the statutory period but does not provide all of the information required by (d), above, the department shall send written notification to the person requesting the reconsideration of the information that is required to complete the request.

(j) The notification sent pursuant to (i) shall specify a deadline for providing the information, which shall be no sooner than 20 days from the date of the notification.

(k) The department's decision on reconsideration shall not be limited to evidence submitted with the request or during a hearing on reconsideration, but shall be based on all information relevant to the matters under consideration and available to the department as decision maker.

(l) The department shall conduct hearings to reconsider a permitting decision in accordance with Env-C 200 relative to non-adjudicative proceedings.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

PART Env-Wt 204 WAIVERS

Env-Wt 204.01 Purpose. The purpose of these rules is to establish the procedures and criteria for granting:

(a) Waivers to rules to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment; and

(b) Waivers under RSA 482-A:26, III(b).

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.01), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 204.02 Procedures.

- (a) A request for a waiver shall be filed in accordance with this part by:
 - (1) A person who is or would be directly and adversely affected by the strict application of a rule in Env-Wt 100 through Env-Wt 800; or
 - (2) A person seeking a waiver under RSA 482-A:26, III(b).
- (b) Each request for a waiver shall be filed in writing.
- (c) Each request for a waiver shall include the information specified in Env-Ws 204.03.
- (d) All requests which are submitted as part of an application for a redevelopment waiver under Env-Ws 1406 or a variance under Env-Ws 1407 shall be submitted with such redevelopment waiver or variance application, or as soon thereafter as the need for the waiver to a rule in Env-Wt 200 through Env-Wt 800 is identified by the applicant or the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 204.03 Content and Format of Requests.

- (a) The person requesting the waiver shall provide the following information:
 - (1) The name, mailing address, and daytime telephone number of the property owner;
 - (2) The name, mailing address, and daytime telephone number of the applicant, if other than the owner;
 - (3) The location of the property to which the waiver request relates, if other than the mailing address of the property owner or applicant;
 - (4) Whether the request is for a waiver under RSA 482-A:26, III(b) or to a rule, and if to a rule the number(s) of the specific section(s) of the wetland rules for which a waiver is sought;
 - (5) A full explanation of why a waiver is being requested, including:
 - a. For a waiver to a rule, an explanation of the hardship that would be caused by compliance with the rule; or
 - b. For a waiver under RSA 482-A:26, III(b), a full explanation of how the statutory criteria of RSA 482-A:26, III(b) will be met;
 - (6) If applicable, a full explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation or data, or both, to support the alternative; and

(7) A full explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Wt 204.04.

(b) The property owner and the person requesting the waiver, if other than the property owner, shall sign the request.

(c) The signature(s) shall constitute certification that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and

(2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.03), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 204.04 Criteria.

(a) Subject to (b), below, a request for a waiver shall be granted if:

(1) Granting the request will not result in:

a. An adverse effect to the environment or natural resources of the state, public health, or public safety; or

b. An impact on abutting properties that is more significant than that which would result from complying with the rule; and

(2) One or more of the following conditions is satisfied:

a. Granting the request is consistent with the intent and purpose of the rule being waived;

b. Strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant; or

c. For waivers under RSA 482-A:26, III(b), granting the request is consistent with the intent and purpose of that section.

(b) No waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.04), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 204.05 Decisions. The department shall notify the person requesting the waiver of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

Source. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

Env-Wt 204.06 Suspension, Revocation, or Modifications of Waivers.

(a) Any waiver to a rule or under RSA 482-A:26, III(b) that is issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If the department receives credible information, after the time has run for requesting reconsideration, that indicates that the information upon which the waiver was based was false, incomplete, or misleading, the department shall notify the person to whom the waiver was issued of:

- (1) The intention to suspend, revoke, or modify the waiver, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the person to whom the waiver was issued shall be given an opportunity to show cause why the proposed action should not be taken.

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and Env-C 200 relative to adjudicative proceedings.

(d) After the hearing, the department shall revoke the waiver if the department determines that:

- (1) The waiver would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project for which the waiver was obtained can not be made to conform to applicable requirements.

(e) After the hearing, the department shall suspend the waiver if the department determines that:

- (1) The waiver would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project for which the waiver was obtained can be made to conform to applicable requirements.

(f) If a waiver is suspended pursuant to (e), above, the department shall reinstate the waiver upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) If as a result of the hearing the department determines that a modification to the waiver is required in order to bring the waiver and the project into compliance with applicable requirements, the department shall issue a modified waiver.

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(h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.

(i) Any person aggrieved by the decision may request reconsideration of the decision pursuant to Env-Wt 203.02 and appeal the decision to the wetlands council in accordance with RSA 482-A:10 and Env-WtC 200.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.06), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200)

CHAPTER Env-Wt 300 CRITERIA AND CONDITIONS FOR PERMITS**REVISION NOTE:**

Document #5186, effective 7-23-91, made extensive changes to the wording, format, and structure of Env-Wt 300. Document #5186 supersedes all prior filings for the sections in this chapter. The prior filings for former Env-Wt 300 included the following documents:

#2271, eff 1-10-83	#4297, eff 7-23-87
#2924, eff 12-11-84	#4352, eff 1-4-88
#3074, eff 7-26-85	#5028, eff 12-20-90

See the revision note at the head of Chapter Env-Wt 600 relative to the deletion of former rules under that chapter by Document #5185, effective 7-23-91 and the incorporation of those former rules into Env-Wt 300 by Document #5186.

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 300 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 301 DELINEATION AND CLASSIFICATION OF WETLANDS**Env-Wt 301.01 Delineation of Wetlands Boundaries.**

(a) Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January, 1987.

(b) Delineation of wetlands based on hydrophytic vegetation or hydric soils alone shall be sufficient for any minimum impact project that meets the criteria of Env-Wt 303.04, provided the vegetation or soil has not been disrupted by artificial planting or past dredging or filling.

(c) The hydric soils component of delineations produced under (a) or (b), above, shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 3, April 2004), published by the New England Interstate Water Pollution Control Commission.

(d) For the purposes of determining the hydrology component of delineations produced under (a) or (b), above, the term “soil surface” shall be defined as follows:

- (1) For Histosols and Histic Epipedons, organic soils, and soils with a thick organic surface horizon, the top of the uppermost soil horizon or the ground surface; and
- (2) For all mineral soils, the top of the mineral soil horizons.

(e) Delineations submitted in accordance with (d), above, shall comply with the delineation methods prescribed in Part 4 of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January, 1987.

(f) Delineations of vernal pools shall be based on the characteristics listed in the definition of “vernal pool” in Env-Wt 100. To assist in the delineation, individuals may use “Identification and Documentation of Vernal Pools in New Hampshire”, 2nd Ed., 2004, published by the New Hampshire fish and game

department.

(g) Any plan required by RSA 482-A that is submitted in support of an application for dredge and fill of wetlands that presents a major or minor project in accordance with Env-Wt 303.02 or Env-Wt 303.03, respectively, shall be:

- (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
- (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s); or
- (3) Signed by a homeowner acting on his or her own behalf, when the homeowner prepares the plan for the development of the homeowner's primary residence, showing the impacts resulting from such development.

(h) No delineation of wetlands, including vernal pools, shall be required outside the limits of impact for any permit application or forestry notification submitted in advance of the activity covered by the application or notification, provided the activity covered by the application or notification is:

- (1) Timber harvesting undertaken in compliance with RSA 227-J where no development or other change in land use will occur;
- (2) Agriculture that falls outside of the parameters of Env-Wt 303.04(u) only because the area of impact exceeds 3 acres or alteration will occur to other than wet meadows only, or both; or
- (3) A combination of timber harvesting and agriculture as described in (1) and (2), above.

(i) Nothing in this section shall prevent individuals permitted in accordance with RSA 485-A:36, and rules promulgated there under, from conducting wetland delineations in accordance with the exemptions provided under RSA 310-A:79, IV.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7047, eff 6-29-99; amd by #7896, eff 5-22-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #9132, eff 4-19-08

Env-Wt 301.02 Classification of Wetland Types.

(a) Wetlands shall be classified by the applicant in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979.

(b) Wetlands classification shall be identified on plans for all major projects involving dredge and/or fill of wetlands.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

PART Env-Wt 302 CRITERIA FOR EVALUATION

Env-Wt 302.01 Statement of Purpose.

(a) For tidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of tidal wetlands. No project shall be allowed that intrudes into a tidal wetland unless the department finds it to be for the public good as set out in RSA 482-A:1. Preserving the integrity of saltmarshes and other tidal wetlands shall be given highest priority by the department, because of the high productivity and rarity of such wetlands and the difficulty in restoration of value and function for those environments.

(b) For nontidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of nontidal wetlands. The department shall place emphasis on preserving bogs and marshes. This priority shall be based on the rarity of those environments and the difficulty in restoration of value and function for those environments.

(c) For tidal buffer zones, need shall be demonstrated by the applicant prior to department approval of any alteration of undeveloped tidal buffer zone. The department shall place its emphasis on preserving the ability of the buffer area to enhance habitat values in the adjoining tidal wetland and to protect tidal environments from potential sources of pollution.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 302.02 Department Action. The criteria in this part shall be used to meet the purpose expressed by RSA 482-A:1 when determining whether to approve, approve with conditions, approve-in-part with conditions, or deny applications.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 302.03 Avoidance, Minimization, and Mitigation.

(a) The applicant shall submit a statement describing the impact of the proposed project design and provide evidence which demonstrates that, subject to (b) below:

- (1) Potential impacts have been avoided to the maximum extent practicable; and
- (2) Any unavoidable impacts have been minimized.

(b) For all permanent impacts that will remain after avoidance and minimization measures have been addressed, the applicant shall submit a compensatory mitigation proposal in accordance with Chapter Env-Wt 800, unless exempted by (c) below.

(c) An applicant shall not be required to submit a compensatory mitigation proposal only if:

- (1) There is no impact, within a jurisdictional area, to:
 - a. An exemplary natural community as defined or identified by the natural heritage inventory; or
 - b. A state or federally listed endangered or threatened species or its habitat or reproduction areas; and
- (2) The total project meets one or more of the following qualifying criteria:
 - a. The project qualifies as minimum impact in accordance with Env-Wt 303.04;
 - b. The project impacts less than 10,000 sq. ft. of wetlands but otherwise qualifies as minor impact in accordance with Env-Wt 303.03;
 - c. The project involves only riprap or other bank stabilization to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
 - d. The project involves only bank stabilization by exclusively incorporating bio-engineering methods, or includes such work in combination with other qualifying criteria;
 - e. The project involves only minor or minimum impacts to streams identified in Env-Wt 303.03 and Env-Wt 303.04, or includes such work in combination with other qualifying criteria;
 - f. The project involves only the installation of accessory docking structures or the construction of new shoreline structures and breakwaters, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all new shoreline structures on the frontage is less than 2,000 square feet; or
 - g. The project involves only construction of a pond classified as a minor or minimum impact identified in Env-Wt 303.03 or Env-Wt 303.04, or includes such work in combination with other qualifying criteria.

(d) Mitigation shall not be required for impacts that are not intended to remain after the project is completed, provided the areas are restored in accordance with provisions shown in the approved project plans.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97,

New. #6498-B, eff 4-23-97; ss by #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 302.04 Requirements for Application Evaluation.

(a) For any major or minor project, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) The need for the proposed impact;
- (2) The alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site;
- (3) The type and classification of the wetlands involved;
- (4) The relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (5) The rarity of the wetland, surface water, sand dunes, or tidal buffer zone area;
- (6) The surface area of the wetlands that will be impacted;
- (7) The impact on plants, fish and wildlife including, but not limited to:
 - a. Rare, special concern species;
 - b. State and federally listed threatened and endangered species;
 - c. Species at the extremities of their ranges;
 - d. Migratory fish and wildlife;
 - e. Exemplary natural communities identified by the DRED-NHB; and
 - f. Vernal pools.
- (8) The impact of the proposed project on public commerce, navigation and recreation;
- (9) The extent to which a project interferes with the aesthetic interests of the general public. For example, where an applicant proposes the construction of a retaining wall on the bank of a lake, the applicant shall be required to indicate the type of material to be used and the effect of the construction of the wall on the view of other users of the lake;
- (10) The extent to which a project interferes with or obstructs public rights of passage or access. For example, where the applicant proposes to construct a dock in a narrow channel, the applicant shall be required to document the extent to which the dock would block or interfere with the passage through this area;

- (11) The impact upon abutting owners pursuant to RSA 482-A:11, II. For example, if an applicant is proposing to rip-rap a stream, the applicant shall be required to document the effect of such work on upstream and downstream abutting properties;
- (12) The benefit of a project to the health, safety, and well being of the general public;
- (13) The impact of a proposed project on quantity or quality of surface and ground water. For example, where an applicant proposes to fill wetlands the applicant shall be required to document the impact of the proposed fill on the amount of drainage entering the site versus the amount of drainage exiting the site and the difference in the quality of water entering and exiting the site;
- (14) The potential of a proposed project to cause or increase flooding, erosion, or sedimentation;
- (15) The extent to which a project that is located in surface waters reflects or redirects current or wave energy which might cause damage or hazards;
- (16) The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland or wetland complex were also permitted alterations to the wetland proportional to the extent of their property rights. For example, an applicant who owns only a portion of a wetland shall document the applicant's percentage of ownership of that wetland and the percentage of that ownership that would be impacted;
- (17) The impact of the proposed project on the values and functions of the total wetland or wetland complex;
- (18) The impact upon the value of the sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;
- (19) The impact upon the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and
- (20) The degree to which a project redirects water from one watershed to another.

(b) For all minimum impact projects, except for recreational mineral dredging activities permitted in accordance with Env-Wt 504, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) Type of wetland to be impacted;
- (2) Surface areas of wetlands impacted;
- (3) Relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (4) The impact upon abutting owners pursuant to RSA 482-A:11, II; and
- (5) Lack of alternatives with lesser wetlands and surface water impacts.

(c) In addition to the requirements of (a) and (b), above, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas in and adjacent to tidal wetlands including the tidal buffer zone:

- (1) The extent to which a project impacts beach or tidal flat sediment replenishment and movement of sediments along a shore;
 - (2) The impact on a tidal wetland's ability to dissipate wave energy and storm surge; and
 - (3) The impact of project runoff on salinity levels in tidal environments.
- (d) The department shall not grant a permit if:
- (1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
 - (2) The project would cause or contribute to significant degradation of waters of the state; or
 - (3) The project will cause random or unnecessary destruction of wetlands.
- (e) Unless a waiver is granted under Env-Wt 204, the department shall not grant a permit if:
- (1) The project proposes fill of a wetland to achieve septic set back from wetlands to meet department or local requirements; or
 - (2) The requirements of Env-Wt 302.03 are not met or the applicant has failed to document consideration of factors as required in (a), (b), and (c), above.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by INTERIM #5400, eff 5-21-92 EXPIRED: 9-18-92; amd by #5548, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9132, eff 4-19-08

Env-Wt 302.05 After-the-Fact Application. Applications received after work is completed shall be subjected to the same review as any other application. Consideration of an after-the-fact application shall not preclude or limit the department's exercise of any enforcement powers it possesses.

Source. #8341, eff 4-25-05 (formerly Env-Wt 204.06) (See second Revision Note at chapter heading for Env-Wt 300)

PART Env-Wt 303 CLASSIFICATION OF PROJECTS

Env-Wt 303.01 Assignment of Classification. Projects shall be classified according to the criteria of this part.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 303.02 Major Projects. Major projects shall be those that meet any one or more of the following criteria:

(a) Projects in sand dunes, tidal wetlands, or bogs, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(b) Projects within 100 feet of the highest observable tide line that alter any bank, flat, wetlands, surface water, or undeveloped uplands, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate;

(d) Construction or modification of major docking system defined by Env-Wt 101.53, and any dock adjacent or attached to a breakwater;

(e) Construction or modification of retaining walls lakeward of the natural shoreline and below the natural mean high water level of great ponds, or lakeward of the normal shoreline and below the artificial high water level of lakes where the state has fee simple ownership or flowage rights. Refacing that does not add more than 6 inches to the width of the wall shall not in itself make a project major;

(f) Projects located in or adjacent to prime wetlands designated under RSA 482-A:15;

(g) Removal of more than 20 cubic yards of rock, gravel, sand, mud, or other material from public waters;

(h) Projects that disturb more than 200 linear feet, measured along the shoreline, of a lake or pond or its bank;

(i) Projects that alter the course of or disturb 200 or more linear feet of an intermittent or perennial nontidal stream or river channel or its banks. For intermittent streams, the distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks;

(j) Construction of a breakwater in public waters;

(k) Projects in a wetland that have been identified by Natural Heritage Inventory - Department of Resources and Economic Development as an exemplary natural community, and/or that has documented occurrences of state or federally listed Endangered or Threatened species;

(l) Projects which, when taken in the aggregate with previous work on the property within the last 5 years, would be considered major. For example, if previous work on the property was fill of 15,000 sq.ft. of nontidal wetlands and an individual applies to fill an additional 15,000 sq. ft. of nontidal wetlands on the property, the application shall be deemed to be for a major project;

(m) Any project that is related to other applications or permits in the wetlands area or wetlands complex in a manner such that if the proposed action were considered to be in a single application the combined impact would be considered major. For example, if 2 individuals apply to rip-rap 150 linear feet of a stream that is part of the same wetlands complex, each application shall be deemed to be for a major project;

(n) Fill in public waters for the purposes of making land; and

(o) Construction of or replenishment of a beach that does not meet the criteria for minimum impact under Env-Wt 303.04(d) or Env-Wt 303.04(aa), or minor impact under Env-Wt 303.03(f).

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by

#7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 303.03 Minor Projects. Minor projects shall be those projects that meet any of the following criteria and that do not meet any of the criteria of Env-Wt 303.02:

(a) Projects in any bank, flat, marsh, or swamp or in and adjacent to any waters of the state or within 100 feet of the highest observable tide line that do not meet any of the criteria of Env-Wt 303.02, Env-Wt 303.04 or Env-Wt 303.05;

(b) Projects that involve work within 50 feet of a saltmarsh that do not meet the criteria of Env-Wt 303.02;

(c) Projects that involve dredge, fill, or construction of a permanent structure in a stream or marsh that do not meet the criteria of Env-Wt 303.02, except those projects in streams which meet the criteria of Env-Wt 303.04(g), (i), (j), (n), (x), (y), or (z);

(d) Construction or modification of any docking system that:

(1) Provides for 4 boat slips including previously existing boat slips;

(2) Uses no more than 100 feet of waterfront; and

(3) Exceeds the design and construction criteria discussed at Env-Wt 402.01 for minimum impact docks classified under Env-Wt 303.04;

(e) Construction of a pond with less than 20,000 square feet of impact in a wetland or surface waters, which does not meet the criteria of Env-Wt 303.04(p);

(f) Construction of or replenishment of a beach that does not exceed the criteria in Env-Wt 303.04(d) or the criteria in Env-Wt 303.04(aa) other than to propose:

(1) Replenishment in excess of the limit of one replenishment in a 6 year period; or

(2) The use of more than 10 cubic yards of sand, but not more than 20 cubic yards;

(g) Removal of no more than 20 cubic yards of rock, gravel, sand, mud, or other materials from public waters;

(h) Projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f);

(i) Projects involving the removal of emergent or submergent vegetation when the method used disturbs the bottom sediment of the water body, unless Env-Wt 303.04(r) applies;

(j) Repair or replacement of existing retaining walls that requires work in the water, but that results in no change in height, length, location, or configuration. If a wall is to be refaced, such additional width shall not exceed 6 inches;

(k) Projects that disturb between 50 and 200 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Env-Wt 303.02;

(l) Projects that alter the course of or disturb less than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks and do not meet the criteria for minimum impact under Env-Wt

303.04(n). For intermittent streams, this distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks;

(m) Installation of new tie-off piles, ice clusters, or dolphins which do not, by their presence, add boat slips to an existing docking system;

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 303.04 Minimum Impact Projects. Minimum impact projects shall be those projects that meet any of the following criteria:

(a) Construction or modification of a seasonal pier or wharf if no more than 2 slips, including previously existing slips, are proposed, and all criteria of Env-Wt 402 are met;

(b) Projects in previously-developed upland areas within 100 feet of the highest observable tide line unless they are major or minor as defined in Env-Wt 303.02 or Env-Wt 303.03, respectively;

(c) Repair or replacement of existing retaining walls that is performed “in the dry” during drawdown of waters, and that results in no change in height, length, location, or configuration. If a wall is to be refaced such additional width shall not exceed 6 inches;

(d) Construction of a beach provided:

(1) The beach shall serve a privately-owned single family residence;

(2) No fill or dredge shall occur below the high water line or full pond elevation;

(3) The total amount of dredge or fill shall not exceed 900 square feet;

(4) No work shall be conducted in a swamp, marsh, tidal buffer zone, bog, or in or adjacent to a prime wetland;

(5) The work shall not alter more than 20 percent of the applicant’s contiguous shoreline up to a maximum of 50 feet; and

(6) No more than 10 cubic yards of sand shall be used;

(e) Roadway construction through forested wetlands for the purpose of conducting forest management activities, provided:

(1) Construction shall be done during frozen conditions;

(2) Roads shall be cleared by felling timber in and adjacent to the roadway;

(3) The road base shall be constructed using no fill other than:

a. Snow pushed on and frozen over the road base; or

b. Stumps, inverted in places where support of the road base is necessary;

(4) The minimum required ditches to obtain adequate drainage shall be constructed;

- (5) Each road crossing shall be no more than 15 feet wide and no more than 200 feet long;
- (6) Stream crossings shall incorporate pole fords with no stumping within the stream banks; and
- (7) Spring retirement of the winter roads shall include soil stabilization and drainage, including water bars, as necessary on the site to prevent the roadway from becoming a channel for ground or surface water runoff;

(f) Projects involving alteration of less than 3,000 square feet in swamps or wet meadows that are not in prime wetlands or do not meet the requirements of Env-Wt 303.02(k), provided that no previous department permit has placed restrictions on the property of the applicant;

(g) Installation of a culvert, pole, or rock ford and associated fill to permit vehicular access to a piece of property for forest management provided:

- (1) Access shall not be used for subdivision, development, or other land conversion to non-forestry uses;
- (2) Roadway width at the crossing shall not exceed 20 feet;
- (3) Fill width, measured at toe of roadway side slopes, shall be minimized, and shall not exceed 50 feet;
- (4) Fill for any single wetland crossing shall not exceed 50 feet in length, measured along the proposed access way; and
- (5) Crossings shall be limited to those that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;
 - b. Are not located in or adjacent to prime wetlands;
 - c. Do not meet the criteria of Env-Wt 303.02(k);
 - d. Do cross stream channels less than 10 feet wide; and
 - e. Do cross wetlands that have no standing water for 10 months of the year;

(h) Installation of a bridge provided that:

- (1) No work is done in the water or wetland;
- (2) The fill does not exceed 3,000 sq. ft. of fill on the banks of a river or bed of the river; and
- (3) The bridge is not in prime wetlands, bogs, marshes, sand dunes, undisturbed tidal buffer zone or does not meet the requirements of Env-Wt 303.02(k);

(i) Construction of temporary crossings of brooks, streams, or rivers for the transportation of forest products or the construction or maintenance of utility pipes or lines and is not in prime wetlands or within 100 feet of the highest observable tide line or does not meet the requirements of Env-Wt 303.02(k);

(j) Projects located within the right-of-way of a public road that do not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone, prime wetlands or do not meet the requirements of Env-Wt 303.02(k) and do not exceed any of the following criteria:

- (1) Drainage structures shall not exceed 3,000 square feet of dredge or fill in area;
- (2) Culverts shall not cross streams 10 feet wide or greater, measured from base of bank slope to base of bank slope;
- (3) Wetlands crossed shall have no standing water for 10 months of the year and shall not exceed 50 feet across, measured along the roadway, and the fill width measured at the base of the roadway side slopes shall not exceed 50 feet; or
- (4) Shoulder widening shall not exceed 3 cubic yards of fill per linear foot in wetlands that have no standing water for 10 months of the year, and shall not exceed 10 feet of additional encroachment measured from base of slope;

(k) Maintenance dredging, when necessary to provide continued usefulness of nontidal drainage ditches, man-made ponds, and spillways, provided that:

- (1) The work is done within the original bounds of a legally-constructed project;
- (2) The project is not located in or adjacent to prime wetlands;
- (3) The work does not exceed 20,000 square feet; and
- (4) For man-made ponds, the pond has not been abandoned as defined in Env-Wt 101.01;

(l) Temporary cofferdams and other water control devices constructed in flowing water or adjacent to dams in conjunction with the repair or maintenance of existing structures. Temporary cofferdams means temporary watertight enclosures built in the water and pumped dry to expose the bottom so that construction may be undertaken. All such work shall be designed and supervised by a professional engineer and shall be removed upon completion of repair and/or maintenance;

(m) Projects that disturb less than 50 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Env-Wt 303.03 or Env-Wt 303.02;

(n) Projects that alter the course of or disturb less than 50 linear feet, measured along the thread of the channel, of an intermittent nontidal stream channel or its banks provided construction is performed during periods of non-flow;

(o) Projects deemed minimum impact by the department based on the degree of environmental impact;

(p) Construction of a pond with less than 20,000 sq. ft. of wetlands impact, provided:

- (1) None of the wetlands have very poorly drained soil as defined in Env-Ws 1002.84;
- (2) There are no streams into or out of the proposed pond site;
- (3) The project is not located in prime wetlands; and
- (4) The project does not meet the requirements of Env-Wt 303.02(k);

(q) Projects to control aquatic weeds by cutting above the roots and harvesting, provided:

- (1) There is no mobilization of bottom sediments;
- (2) The project is not located in prime wetlands, marshes, or bogs; and

- (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (r) Projects to control exotic aquatic weeds Cabomba carolina (fanwort) and/or Myriophyllum heterophyllum (exotic milfoil) as authorized by RSA 487:17, provided:
 - (1) Work is conducted under the supervision of the department unless included in Env-Wt 303.05;
 - (2) The project is not located in prime wetlands, marshes, bogs, or tidal wetlands; and
 - (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (s) Dredging for gold or other minerals, provided:
 - (1) The criteria of Env-Wt 304.14 are not exceeded;
 - (2) The project is not located in prime wetlands, marshes, or bogs; and
 - (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (t) Restoration of altered or degraded wetlands provided the project:
 - (1) Receives financial support and direct supervision of a New Hampshire state agency, the US Environmental Protection Agency, the US Army Corps of Engineers, the US Natural Resources Conservation Service, or the US Fish and Wildlife Service;
 - (2) Shall not be used to perform restoration in cases where the applicant is subject to a removal or restoration order;
 - (3) Is not located in or adjacent to prime wetlands; and
 - (4) Does not meet the criteria of Env-Wt 303.02(k).
- (u) Maintenance or improvement of existing crop or pasture land for continued agricultural use, provided:
 - (1) The applicant's county conservation district certifies in writing that:
 - a. The project is in accordance with a plan developed to standards of the "Best Management Wetland Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993, amended September 1998;
 - b. The project is necessary for or incidental to a preexisting and ongoing bonafide agricultural operation as defined by RSA 21:34-a; and
 - c. The plan is limited to those items addressed by the "Best Management Wetlands Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993, amended September 1998;
 - (2) The applicant accepts a permit condition stating that any change in use to a non-agricultural purpose will require further permitting by the department;
 - (3) The applicant shall record the permit at the registry of deeds;
 - (4) The improvement portion of the project does not impact more than 3 acres of wetland;

- (5) The project is not in or adjacent to prime wetlands, is not in sand dunes, is not in the 100 foot tidal buffer zone, and does not meet the requirements of Env-Wt 303.02(k);
- (6) The project will cause alteration only to wet meadows except where specifically described in “Best Management Wetlands Practices for Agriculture”, N.H. department of agriculture, dated July 16, 1993, amended September 1998;
- (7) The application includes:
- a. A complete copy of the county conservation district’s cooperator agreement;
 - b. Conservation plan with accompanying map;
 - c. A USDA soil conservation service soils map with the site located;
 - d. A soils legend identifying poorly drained and very poorly drained map units.
 - e. Dated, labeled photograph(s) mounted on 8 1/2” x 11” sheets depicting portions of wetland, shoreline, or surface waters where proposed impact will occur, and showing all existing structures;
- (8) The project involves poorly drained soils with no greater than 15% inclusion of very poorly drained soils as defined by Env-Ws 1014.02; and
- (9) The project does not include filling or draining of wetlands of greater than 3,000 sq. ft. for placement of parking lots, or lot development, or of buildings, with the exception of agri-chemical handling facility buildings.
- (v) Maintenance, repair, and replacement in-kind of existing docking structures, such as breakwaters, docks, boat houses, piers, wharves, walkways, boat ramps, tie-off pilings, ice clusters, dolphins, or other docking facilities, provided:
- (1) No work is proposed that would be prohibited under RSA 482-A:26;
 - (2) No change in location, configuration, construction type, or dimensions is proposed; and
 - (3) The applicant certifies in writing that:
 - a. The existing structures would be considered grandfathered in their current configuration pursuant to Env-Wt 101.44 and have not been abandoned pursuant to Env-Wt 101.01 or Env-Wt 303.05(a)(4); or
 - b. The existing structures have been constructed in accordance with a previously-issued wetlands permit and have not been abandoned pursuant to Env-Wt 101.01 or Env-Wt 303.05 (a)(4);
- (w) Excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, for installation of a dry hydrant;
- (x) Maintenance, repair, or replacement of a nondocking structure such as a culvert, headwall, bridge, dam, residential utility line, or rip-rap slope of less than 50 linear feet, provided:
- (1) No change in location, configuration, construction type, or dimensions is proposed; and

(2) The applicant certifies in writing that the structure, in its current location, configuration, construction type and dimensions:

- a. Was previously permitted by the department and has not been abandoned; or
- b. Would be considered grandfathered under Env-Wt 101.43 and has not been abandoned;

(y) Construction of trails in accordance with the “Best Management Practices for Erosion Control During Trail Maintenance and Construction”, N.H. department of resources and economic development, copyright 1994, updated 2004, provided there is less than 3,000 square feet of impact to wetlands per crossing and all crossings are of stream channels less than 10 feet wide;

(z) Installation of a culvert or bridge and associated fill to permit vehicular access to a piece of property for a single family building lot or for noncommercial recreational uses, provided:

- (1) The total jurisdictional impact does not exceed 3,000 square feet;
- (2) The roadway width at the crossing shall not exceed 20 feet;
- (3) The fill width, measured at toe of roadway side slopes, shall be minimized, for example, by steepening the sideslopes and constructing walls, and not exceed 50 feet;
- (4) Fill for any single wetland crossing shall not exceed 60 feet in length, measured along the centerline of the proposed access way; and
- (5) Such projects shall be limited to crossings that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;
 - b. Are not located in or adjacent to prime wetlands, as defined by Env-Wt 701.02 through Env-Wt 701.04;
 - c. Do not meet the criteria of Env-Wt 303.02(k); and
 - d. Cross stream channels less than 10 feet wide;

(aa) Replenishment of sand on an existing beach, provided:

- (1) No sand shall be placed below the high water line or full pond elevation;
- (2) No work shall be conducted in or adjacent to prime wetland;
- (3) No more than 10 cubic yards of sand shall be used; and
- (4) The beach replenishment shall not exceed the limit of one replenishment in any 6 year period;

(ab) Construction of an anchoring pad for a seasonal dock provided:

- (1) The pad shall be constructed landward of the high water line or full pond elevation;
- (2) The pad shall not exceed 7 feet in width or impact more than 10 linear feet along the bank, with the bank fully stabilized upon completion of construction;

(3) Appropriate erosion, siltation, and turbidity control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls maintained until the site has stabilized; and

(4) The pad shall not be constructed in or adjacent to prime wetlands, and does not meet the requirements in Env-Wt 303.02(k);

(ac) Installation of a seasonal boatlift in an existing grandfathered or legally-existing, permitted boat slip, provided the boatlift is:

(1) Installed such that no additional boat slip is created by installation of the lift;

(2) Removed during the non-boating season;

(3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water; and

(4) Installed in a manner which requires no impact that would necessitate further permit action;

(ad) installation of a seasonal personal watercraft lift, provided the personal watercraft lift is:

(1) Installed immediately adjacent to a dock, and in a legally-existing boat slip, or, if there are no other personal watercraft lifts on the frontage, a maximum of 2 lifts installed immediately adjacent to one another and along the owner's shoreline;

(2) Removed during the non-boating season;

(3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;

(4) Installed in a manner that creates no impacts that would require further permit action; and

(5) Located on a parcel of land that has 75 feet or more of shoreline frontage;

(ae) Installation of residential utility lines and associated temporary impacts to permit utility services for a single family building lot, provided:

(1) The total jurisdictional impact shall not exceed 3,000 square feet;

(2) The impact width at the crossing shall not exceed 20 feet;

(3) Such projects shall be limited to crossings that:

a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;

b. Are not located in or adjacent to prime wetlands;

c. Do not meet the criteria of Env-Wt 303.02(k); and

d. Cross stream channels less than 10 feet wide; and

(4) All disturbed areas are regraded to original contours and stabilized within 72 hours following completion of work;

(af) Temporary impacts associated with the inspection, maintenance, and repair of existing utility lines within an existing utility right of way provided:

- (1) Total jurisdictional impacts shall not exceed one acre;
- (2) The equipment used shall be designed to have low ground contact pressure or placed on temporary swamp mats so as to minimize rutting of the soils;
- (3) The work shall be conducted under low flow or low groundwater conditions, or during frozen ground conditions;
- (4) Access routes through the right of way shall be designed to minimize impacts to jurisdictional areas;
- (5) The equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;
- (6) Refueling of equipment shall occur a minimum of 100 feet away from wetland and surface waters or both;
- (7) All temporary impacts to wetlands shall be regraded to original contours and stabilized within 72 hours following the completion of work and within 30 days of the start of work;
- (8) Stream impacts shall be limited to intermittent stream beds less than 10 feet in width and shall be conducted during low flow conditions;
- (9) No work shall be done in or adjacent to prime wetlands; and
- (10) The project does not meet the criteria of Env-Wt 303.02(k).

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #5444, eff 8-3-92; amd by #5739, eff 11-23-93; amd by #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 303.05 Projects in Jurisdiction That Do Not Require a Permit. The following activities shall not require application or, unless explicitly stated, a notification to the department:

- (a) Repair or reconstruction of an existing legal structure that meets the following conditions:
 - (1) The size, location, configuration, and construction shall remain unchanged;
 - (2) There shall be no work on any portion of the structure located in the water;
 - (3) The work shall not require the use of tracked or wheeled equipment in the department's jurisdiction; and
 - (4) The structure has not been abandoned;

(b) Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided:

- (1) The roots of the vegetation are not disturbed;
- (2) The ground is frozen or sufficiently dry to avoid making ruts;
- (3) The area is stabilized once thawed; and
- (4) The project is not located in prime wetlands;

(c) Placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as appropriate;

(d) Panning for gold or other minerals in sand or gravel stream beds, provided there is no use of mechanical equipment and no digging in the banks of the stream and provided written permission from the landowner is obtained;

(e) Hand removal of exotic aquatic plants or installation and maintenance of benthic barriers on the bottom of a surface water to control the growth of exotic aquatic plants as authorized by RSA 487:17, provided:

- (1) The work is conducted by SCUBA divers who have received weed control diver certification from the professional association of diving instructors;
- (2) The project is conducted in accordance with a long-term management plan designed pursuant to Env-Wq 1305.03;
- (3) The project is not located in prime wetlands, marshes, bogs, or tidal wetlands;
- (4) Diver-assisted harvesting of exotic aquatic weeds in flowing waters will be initiated only at the most upstream location of the infestation; and
- (5) The project does not meet the requirements of Env-Wt 303.02(k);

(f) Installation of a culvert in an area where waters flow during runoff to such a limited extent as not to create a defined channel nor maintain wetlands vegetation or wetlands soils;

(g) Use of hand tools such as augers or tile spades, monitoring wells, piezometers, staff gauges, and flow meters, for:

- (1) Determining limits of jurisdictional wetlands;
- (2) Determining stability of shoreline for data to be included in a wetlands application;
- (3) Educational purposes; or
- (4) Monitoring hydrology;

(h) Hand raking of leaves or other organic debris from the shoreline or lakebed provided that:

- (1) At the time raking is done, the area raked is exposed by drawdown; or
- (2) Raking does not disturb vegetative roots and is limited to 900 square feet of area;

(i) Landscaping, gardening, or deck or stair construction in the upland tidal buffer zone;

(j) Removal of a beaver dam by hand or machine provided:

- (1) Machinery does not enter the water or create any disturbance by filling or dredging to adjacent surface waters, wetlands, or their banks;
- (2) All dredged materials are placed out of department jurisdiction; and
- (3) Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water so as to cause erosion or siltation;

(k) Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in (b), above. For the purposes of this rule, Phragmites sp. and similarly invasive species shall not be considered to “enhance” wetlands;

(l) Maintenance of public beaches in tidal waters for the purposes of removal of seaweed, algae or other debris provided:

- (1) Work is done during low tide;
- (2) No work is done in the water;
- (3) Work is done by the state or local agency responsible for maintenance of a public beach and not by private land owners; and
- (4) No work shall be done which involves removal of sand and/or regrading or recontouring of the beach, except as provided in (m) below;

(m) The regrading and recontouring of public beaches as necessary to maintain the integrity of seawalls and to insure the safety and protection of the public on beaches maintained by the state of New Hampshire department of resources and economic development;

(n) Drilling geotechnical borings during the final design phase of public projects, provided:

- (1) The applicant shall provide the landowner, the department, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted prior to its commencement;
- (2) Vehicles used shall be either skid-mounted, portable, or those designed to have low ground contact pressure;
- (3) Ruts shall be minimized and shall not exceed one foot in depth;
- (4) The type and manner of drilling shall be selected to minimize impact on water quality;
- (5) Drill holes shall not exceed 8 inches in diameter;
- (6) Drill holes shall be back-filled with drill spoil or, if conditions require, shall be filled with clean material or grout;
- (7) Drill cuttings shall be removed out of department jurisdiction, unless they are used as provided in (6) above;
- (8) Equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;

(9) No filling of wetlands shall be allowed except to smooth or regrade ruts or to use vegetative cuttings as an access roadbase;

(10) All impacts to wetlands shall be temporary and upon completion of the drilling the rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;

(11) Any drilling in surface waters shall be done using machinery operated from a barge, from the ice, or from adjacent uplands, and department water quality standards shall be met; and

(12) No work shall be done in bogs, marshes, tidal wetlands, in or adjacent to prime wetlands, or in surface waters except as provided in (11) above;

(o) Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the final design phase of public projects provided:

(1) The applicant shall provide the landowner, the department, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted prior to its commencement;

(2) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;

(3) All impacts shall be temporary and upon completion of test pitting the rutted and excavated areas shall be back filled with excavated material, regraded and smoothed so that the area will naturally revegetate after one season;

(4) Appropriate erosion control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls shall be maintained until the site has stabilized; and

(5) No work shall be done in or adjacent to prime wetlands;

(p) Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous waste materials, provided:

(1) The agency shall provide the department with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access;

(2) The agency shall provide the landowner, the department, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted prior to its commencement;

(3) Only tracked or portable equipment shall be used for access to the site or for drilling;

(4) Ruts shall be minimized and shall not exceed 4 inches in depth;

(5) Any drilling in surface waters shall be done with portable equipment which does not require vehicles to enter the water, and shall be done in a manner which minimizes impact on water quality;

(6) Drill holes shall not exceed 8 inches in diameter;

(7) Drill holes shall be back filled with drill spoil or permanently cased;

- (8) Drill cuttings not used to back fill drill holes shall be removed out of department jurisdiction;
- (9) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;
- (10) All impacts to wetlands shall be temporary and upon completion of the drilling all rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
- (11) No work shall be done in bogs, marshes, tidal wetlands, or in or adjacent to prime wetlands;

(q) Routine roadway and railway maintenance activities, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance, conducted in accordance with “Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire”, published by the New Hampshire department of transportation, dated August 2001 (“BMPs for Routine Roadway Maintenance”), provided:

- (1) The activity sponsor shall:

- a. Obtain a “Notification of Routine Roadway and Railway Maintenance Activities” form from the department by calling (603)271-2147 or by downloading a copy from <http://www.des.nh.gov/wetlands>;
- b. File a properly completed notification form with the department, indicating that the proposed project meets the criteria for exemption from the permitting process, which completed form shall include:
 - 1. The name and mailing address of the activity sponsor;
 - 2. The name and daytime telephone number of an authorized representative of the activity sponsor;
 - 3. The location of the proposed activity;
 - 4. A description of the proposed activity;
 - 5. Reference to the applicable BMP section which applies to the activity;
 - 6. A copy of the USGS topographical map identifying the location of the proposed project;
 - 7. Sketches of the proposed construction design;
 - 8. Color photographs of the proposed work site showing existing structures, surrounding land, and the subject water body; and
 - 9. A signed certification that the information provided above is accurate and correct;
- c. Provide a copy of the completed notification form to the local governing body and to the municipal conservation commission, if any, at least 5 calendar days prior to commencement of work;

- (2) No work shall occur on property not owned by the activity sponsor without the activity sponsor, in addition to the requirements in (1) above, providing:

- a. A written release from all owners of the property on which the work will be done; or

- b. A completed notification form, at least 5 calendar days prior to start of work, to each owner of property that will be impacted by the work;
- (3) No work shall be done in excess of the activities outlined in the “BMPs for Routine Roadway Maintenance”;
- (4) Siltation, erosion, and turbidity controls shall be:
 - a. Installed in accordance with the “BMPs for Routine Roadway Maintenance”;
 - b. Maintained so as to maximize their effectiveness; and
 - c. Left in place until disturbed areas are fully stabilized;
- (5) Work shall not involve movement of tracked or wheeled equipment into or through surface waters or wetlands, but only on dry or frozen ground;
- (6) Work within surface waters shall be done “in the dry”, either during periods of low water or behind temporary diversions such as sandbag cofferdams designed and installed in accordance with the “BMPs for Routine Roadway Maintenance”;
- (7) Dredged materials shall be placed out of RSA 482-A jurisdiction;
- (8) All work shall be completed in accordance with RSA 483-B, the Comprehensive Shoreland Protection Act (“CSPA”);
- (9) No work shall be done:
 - a. In or adjacent to municipally-designated prime wetlands;
 - b. Within ¼-mile of a New Hampshire river designated pursuant to RSA 483; or
 - c. In bogs, marshes, tidal wetlands, undisturbed tidal buffer zone, or sand dunes;
- (10) A copy of the completed notification form shall be posted in a prominent location at the worksite prior to initiation of work at the worksite; and
- (11) The activity sponsor shall comply with all other requirements as set forth in the “BMPs for Routine Roadway Maintenance.”

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7856, eff 3-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9095, eff 2-23-08

PART Env-Wt 304 APPROVAL CONDITIONS

Env-Wt 304.01 Conditions Specified on Permit. Project approval by the department shall be subject to conditions as specified on the permit. The department shall impose conditions, as required, to assure that the project’s impacts are minimized. In addition to permit conditions, the conditions set forth in Env-Wt 304 shall be complied with as applicable.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.02 Rock Removal. Rocks removed from a lake bed shall be placed out of the department's jurisdiction, or in the lake with at least 10 feet of water depth over the deposited rocks, unless another use is specifically permitted.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.03 Timing of Projects. The department shall place time limits on a project activity as a condition when the environmental impact of a project is reduced by doing so. For example, the department places conditions on dredging projects which require the project to be conducted either during drawdown or in a certain time period to account for spawning, fishery migration, and to decrease the degradation of the water quality.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.04 Setback From Property Lines.

(a) The department shall limit the location of a project to at least 20 feet from an abutting property line or imaginary extension thereof over surface water unless it receives written agreement from the affected abutter concurring with any impact that may result relative to the abutter's interests.

(b) The department shall increase the setback if it finds that the proposed location represents a danger to other waterfront activities, a navigation hazard, or interferes with an abutter's access to or use of the abutter's property.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.05 Logging Operations.

(a) Impacts to surface waters and wetlands shall be avoided or minimized in accordance with Env-Wt 302.04(b) and (c).

(b) All skid trails, truck roads, and log landings shall be located far enough from surface waters and wetlands so that waterborne soil particles will settle out before reaching the surface waters or wetlands.

(c) All skid trails, truck roads, and log landings shall be laid out using appropriate erosion control devices, as outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, department of resources and economic development, 2004, so that the grade approaching a surface water or wetland is broken, and surface run-off is dispersed.

(d) Culverts, bridges, pole fords, or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, department of resources and economic development, 2004, except when road and stream banks are sufficiently frozen to avoid rutting or destabilization. Said crossings shall be removed when logging is completed in the area serviced by the crossing. Corduroy crossings at locations where there is no defined channel may be left in place. Corduroy crossings means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

(e) All permanent crossings on truck roads shall be adequate to handle a 25-year flood, the peak flow that statistically would occur once in 25 years.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #9132, eff 4-19-08

Env-Wt 304.06 Erosion and Siltation Control Measures.

(a) Erosion and siltation control measures shall be installed prior to start of work, shall be maintained, and shall remain in place during construction until all disturbed surfaces are stabilized.

(b) Erosion and siltation control shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.

(c) A coffer dam or a curtain of a non-porous material shall be used to enclose a dredging project conducted in a marsh, lake, pond, stream, river, creek, or along the shoreline of other surface waters.

(d) Construction or modification shall not cause violations of surface water quality standards, specified in Env-Ws 1700.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.07 Culverts. Embankments shall have appropriate slope protection adjacent to culverts such as concrete or stone headwalls or rip-rap where flowing water conditions exist.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.08 Beaches.

(a) The size of a new beach serving a single residence shall not exceed 900 square feet.

(b) No new private beach shall use more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet of the applicant's contiguous shoreline.

(c) Replenishment of existing beaches shall be limited to one replenishment in a 6 year period.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.09 Subdivisions.

(a) Plans submitted with a wetlands application associated with a proposed subdivision shall indicate the boundaries of all wetlands and surface waters, the footprint of all proposed impacts, existing and proposed topography, and the location of all proposed lot lines. Plans shall be stamped by a licensed land surveyor or a professional engineer pursuant to RSA 310-A, and parties responsible for the wetlands delineation shall be recorded on the plan.

(b) The plans for major project subdivisions shall have wetlands classifications clearly indicated in accordance with Env-Wt 301.02.

(c) There shall be no further wetlands impact for lot development on any subdivision approval. If the approval is for a single phase of a multiphase subdivision, the applicant shall provide a master plan identifying all wetlands on the property and a conceptual layout for future phases of development.

(d) Permits for subdivisions of 4 or more lots shall not be effective until the permittee records the permit with the appropriate registry of deeds and a copy of the registered permit has been received by the department.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.10 Shoreline Structures.

(a) Shoreline structures shall meet the criteria of Env-Wt 400.

(b) Permits for structures that provide docking for watercraft shall not be valid until recorded with the appropriate registry of deeds.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.11 Dredging Projects.

(a) Dredge spoils shall be disposed of out of the areas under the jurisdiction of the department unless other disposition is specifically permitted. Dredge spoils means material removed as the result of dredging.

(b) Dredging in tidal waters shall be done between November 15 and March 15, and shall not be permitted during a fish migration or larval setting stage of shellfish.

(c) Dredging in freshwater lakes, ponds, streams, brooks, or rivers shall be done so as not to impede fish migrations or interfere with spawning areas for fish.

(d) Dredging shall not disturb contaminated layers of sediment, unless specifically identified and permitted with protective conditions.

(e) Dredging projects in tidal waters shall be designed to ensure that there is no disruption of tidal flushing. Tidal flushing means the influx or outflow of water which is associated with the ebb and flow of the tide.

(f) Appropriate controls, such as cofferdams, siltation curtains, or non porous curtains, shall be used to contain turbidity.

(g) Dredged material to be stockpiled in uplands shall be dewatered in sedimentation basins lined with siltation and erosion controls, and located outside jurisdiction to prevent water quality degradation.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.12 Filling Projects.

(a) Fill shall be clean sand, gravel, rock, or other suitable material, and shall not contain material not approvable by the department.

(b) Limits of fill shall be marked by construction fence or equivalent prior to commencement of work to assure that fill does not spill over into adjacent wetlands or surface waters.

(c) Slopes shall be immediately mulched or otherwise stabilized to prevent erosion into adjacent wetlands or surface waters.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.13 Utility Crossings.

(a) Crossings of surface waters or wetlands by utilities shall be kept to a minimum and shall be located to minimize impact in accordance with Env-Wt 302.04.

(b) The width of the impact shall be kept to that necessary for safe operation of machinery and safety of workers. Supplies and spoils shall not be stockpiled in wetlands. Spoils means the material that is removed as the result of dredging.

(c) Mats shall be used when their use will reduce the impact on the wetland.

(d) Projects shall not endanger navigation, recreation, or commerce of the general public.

(e) Siltation control devices shall be used in accordance with Env-Wt 304.06 as appropriate.

(f) Crossings shall be restored to natural grade, stabilized, and replanted with native vegetation.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.14 Gold Mining and Dredging.

(a) Power equipment for gold mining and dredging shall be limited to 5 horsepower and shall not have any fuel, oil, or hydraulic leaks.

(b) Suction dredges shall be limited to 4-inch diameter intake nozzle.

(c) Sluice and rocker boxes shall be limited to 10 square feet.

(d) Use of mercury or chemicals for extraction shall be prohibited.

(e) Streams shall not be dammed or altered.

(f) Written permission from the landowner shall be obtained by the applicant before dredging.

(g) Work shall be confined to the beds of streams with no disturbances to the banks adjacent to waters of the state.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #5549, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

Env-Wt 304.15 Coffer Dams. Cofferdams and other temporary water control devices shall be removed upon completion of the project.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)

CHAPTER Env-Wt 400 SHORELINE STRUCTURES

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 400 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 401 STATEMENT OF PURPOSE AND EVALUATION

Env-Wt 401.01 Purpose. The purpose of this chapter is to protect the public trust and other interests of the state of New Hampshire, by:

(a) Establishing requirements for the design and construction of structures in order to prevent unreasonable encroachment on surface waters of the State;

(b) Preserving the integrity of the surface waters of the state by requiring all structures to be constructed so as to insure safe navigation, minimize alterations in prevailing currents, minimize the reduction of water area available for public use, avoid impacts that would be deleterious to fish and wildlife habitat, and avoid impacts that might cause erosion to abutting properties; and

(c) Ensuring that all projects are constructed using the least impacting alternatives, in a manner that meets the requirements of RSA 483-B and shoreline and bank alteration or stabilization requirements.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #9095, eff 2-23-08

Env-Wt 401.02 Evaluation. In addition to the requirements of this chapter, evaluation of applications for shoreline projects shall be subject to the applicable requirements of Env-Wt 300.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

PART Env-Wt 402 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 402.01 Configuration. Approvable configurations for all docks located on lakes, ponds, rivers, and streams shall include:

(a) A standard configuration that is narrow, rectangular, and:

(1) If in a lake or pond, erected perpendicular to the shoreline; and

(2) If in a river or stream, erected parallel to the bank; and

(b) A nonstandard configuration shaped like the letter L, T, F, or U, when the applicant establishes through documentation that:

- (1) The standard configuration would cause a safety hazard due to wind, other weather conditions, or other natural conditions such as water depth unique to the property;
- (2) The nonstandard configuration chosen for the dock provides the least environmental impact on shoreline and water body; and
- (3) The nonstandard configuration does not interfere with boat traffic safety.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #3075, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.02 Navigation Space. The design and construction of docking facilities shall allow for a maximum of 2 feet of navigation space between a boat slip and any other structure or boat slip.

Source. #9095, eff 2-23-08

Env-Wt 402.03 Dimensions.

(a) Approvable standard dimensions for a dock shall not exceed the following dimensions:

(1) In lakes and ponds of 1,000 acres or more:

- a. For seasonal docks, a deck width of 6 feet and deck length of 40 feet, measured from normal high water mark; and
- b. For permanent docks, a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

(2) In lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

(3) In rivers and streams, for seasonal docks a deck width of 6 feet and deck length of 40 feet, measured along the shoreline.

(b) The dimensions in (a) above may be exceeded when the department determines, based on information provided by the applicant, that:

- (1) Application of the standard dimensions would represent a safety hazard due to wind or other weather conditions;
- (2) The property has a unique physical hardship, such as, insufficient water depth, not shared generally by nearby properties, that requires larger dimensions;
- (3) The applicant has a permanent disability that requires larger dimensions in order to safely use the water; or

(4) Exception from the standard maximum dimensions by use of clustering of structures in one location would result in less environmental impact to the shoreline and water body than would standard dimensions.

(c) For a property with less than 75 feet of water frontage, docks or piers shall be no longer than 4 feet by 24 feet, in accordance with Env-Wt 402.12.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.04 Setbacks. As required by RSA 482-A:3, XIII(a), all docks shall be located at least 20 feet from any abutting property line or imaginary extension of the property line over surface water, unless the provisions of RSA 482-A:3, XIII(c) or (d) are met.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.05 Seasonal Docks.

(a) A seasonal dock shall be:

- (1) Designed to be installed at the beginning and removed at the end of the boating season;
- (2) Removed from the water for a minimum of 5 months of every calendar year;
- (3) Designed and placed in the water so as not to obstruct navigation;
- (4) Removed from the water for the purpose of applying paint, stain, or other preservatives; and
- (5) Installed only if in compliance with RSA 482-A:3, IV-a or otherwise permitted under RSA 482-A.

(b) In order to qualify for permit by notification under Env-Wt 506, seasonal docks on rivers and streams shall, in addition to the requirements in (a) above:

- (1) Be located on a property having at least 75 feet of shoreline frontage;
- (2) Be the only structure on the property's shoreline frontage;
- (3) Conform with the standard configuration set forth in Env-Wt 402.01(a); and
- (4) Conform with the standard dimensional criteria set forth in Env-Wt 402.02(a)(3).

(c) Seasonal docks, once permitted, shall require no further action unless there is a change in size, location, or configuration.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.06 Permanent Docks.

(a) Subject to (b) and (m), below, an application for a permanent dock shall be approved only when an applicant establishes that:

- (1) The proposed permanent dock will be located on a lake of over 1,000 acres; and
- (2) The proposed site for the dock is exposed to a design fetch of at least 1 mile between compass headings 245 to 340 degrees, or a design fetch of at least 2 miles between compass headings 341 to 0 or 0 to 244 degrees, as measured from true north.

(b) When the applicant does not meet the requirements of (a), above, the department shall approve the permanent dock provided the applicant documents the occurrence of 1 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed dock on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15.

(c) To qualify under (b), above, the applicant shall provide the following:

- (1) Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or
- (3) Written site measurements completed during the relevant period and verified as accurate by department staff.

(d) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4-hour periods.

(e) All applications for permanent installations shall indicate that reasonable investigations have been undertaken to determine the impossibility of driving pilings before alternate construction methods shall be approved.

(f) Such investigations may include trial driving by commercial equipment, probings, and experience in construction of adjacent wharves or docks.

(g) The minimum spacing for pile bents shall be 12 feet center to center.

(h) After an applicant has demonstrated that pilings cannot be driven and that a seasonal structure cannot be maintained on the frontage, a crib dock shall be approved.

(i) The maximum size of cribs for water depths of up to 6 feet shall not exceed 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level.

(j) The crib itself shall be of timber, prefabricated concrete, or other approved materials securely fastened together and of such size and spacing necessary to completely contain the stone ballast or other fill material.

(k) The side dimensions of cribs may be increased one foot for every additional foot of water depth above 6 feet. The minimum clear spacing between cribs shall be 12 feet.

(l) Special designs such as caissons, concrete supports, or prefabricated cofferdams are of a highly specialized nature and shall be considered on an individual basis by the department.

(m) A permanent dock shall be approved regardless of the design fetch when at least one of the following requirements is met:

- (1) The dock will be located on an island accessible only by watercraft;
- (2) The dock will be subjected to unusually heavy loading where a permanent dock is needed for safety, such as a dock at a commercial facility that is used to convey heavy equipment or freight; or
- (3) The dock will provide a significant public benefit, such as a docking facility that is open to the general public for transient use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; rpld and rsvd by #7988, eff 11-21-03

New. #8341, eff 4-25-05 (from Env-Wt 402.06) (See Revision Note at chapter heading for Env-Wt 400); amd by #9095, eff 2-23-08

Env-Wt 402.07 Breakwaters.

(a) Breakwaters shall be considered major projects pursuant to Env-Wt 303.02.

(b) Subject to (c), below, breakwaters shall only be approved when an applicant establishes that the following requirements are met:

- (1) The breakwater is proposed to be located in Lake Winnepesaukee;
- (2) The proposed site for the breakwater is exposed to a single radial fetch of at least 4 miles between compass headings 300 and 330 degrees as measured from true north, as illustrated in a map of Lake Winnepesaukee showing areas that meet these criteria, in Appendix A, of which larger copies are available at the department's wetlands bureau or on the department's website;
- (3) The breakwater is located in an area with no significant sand migration;
- (4) The property associated with the breakwater contains a minimum of 100 feet of shoreline frontage pursuant to Env-Wt 101.83; and

(5) The breakwater is designed in accordance with the design and construction criteria in (d) through (l), below.

(c) When the applicant meets all requirements in paragraph (b), above, except for subparagraph (2), the department shall approve the breakwater provided:

(1) The applicant documents the occurrence of 2 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed breakwater on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15;

(2) The applicant provides documentation, including:

- a. Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or
- b. Written site measurements completed during the relevant period and verified as accurate by department staff; and

(3) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4 hour periods.

(d) Construction shall be of stone, concrete, wood, or other inert materials consistent with the individual conditions of each site.

(e) Breakwaters, when measured at normal full lake elevation, shall have:

- (1) No point more than 50 feet from the natural shoreline; and
- (2) A total length of no more than 70 feet.

(f) The approved configuration for breakwaters shall be the least impacting alternative of breakwater construction for that site.

(g) No portion of the breakwater, including any portion underwater, shall be placed within 20 feet of an abutting property line or its imaginary extension into the water.

(h) No stockpiling of rocks shall be allowed in jurisdiction unless the applicant documents that the limited and difficult access to the site precludes stockpiling outside of jurisdiction and stockpiling is temporary.

(i) Rocks from frontage may only be used as a source of breakwater material when removed from another structure on the frontage for the purpose of constructing the breakwater.

(j) Slope shall be 1:1.5, rise to run, or greater.

(k) Breakwaters shall have an irregular face to diffuse wave activity.

(l) Applicants for breakwaters shall provide the following information in plan or cross-section:

- (1) Toe of slope dimensions;
- (2) The dimensions visible at normal high water level;
- (3) The direction of prevailing wave activity;
- (4) A minimum gap of 6 feet between the breakwater and shoreline;

- (5) A reference line identifying the 50 foot distance from the shoreline;
- (6) All docking structures on the property or otherwise associated with the property;
- (7) Construction sequence;
- (8) Cross-sections showing:
 - a. The breakwater height;
 - b. The breakwater slope; and
 - c. Normal high water level; and
- (9) A list of construction materials.

(m) The owner of a breakwater that causes significant adverse effects on abutting property owners or on public use of the water shall modify the breakwater so as to eliminate such adverse effects. If modification is impossible or ineffective, the owner of the breakwater shall remove the breakwater.

(n) Breakwaters shall not exceed 3 feet above normal full lake elevation, and shall not exceed 3 feet in width at the highest point of the structure.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.07) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.08 Canopies. Canopies shall be constructed so as not to obstruct views from adjacent property or interfere with boating or swimming safety. The fabric covering of a canopy shall be removed from locations over surface waters during seasons of non-use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7072, eff 8-13-99; amd by #7303, eff 6-8-00; ss and moved by #8341, eff 4-25-05 (from Env-Wt 402.08) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.09 Structures Disallowed.

- (a) Boathouses located in or over the waters shall not be approved.
- (b) A boathouse located over a dredged inlet within the property of the applicant shall not be approved unless the applicant has shown through data supplied to the department that the following conditions have been met:

- (1) The proposed construction shall not adversely impact the stability of the shoreline;
- (2) The proposed construction sequence and techniques shall prevent water quality degradation;
- (3) The proposed construction shall be performed in such a manner so as to prevent adverse impact to existing movements of currents or sediment along the shore;
- (4) Alternative docking and storage solutions with less environmental impact do not exist; and
- (5) The proposed construction shall not impact wetlands, streams or similar areas.

(c) Structures over the waters shall not be allowed for the transfer of any activities usually associated with land, including but not limited to sunbathing and picnicking.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.09) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.10 Stairways. Stairways for access to or from legally-constructed docks shall be allowed as part of the dock permitting process, provided:

- (a) The stairway width does not exceed 6 feet; and
- (b) Construction over the bank does not require regrading or recontouring.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.10) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.11 Maintenance. Any structures constructed under these criteria shall be maintained so as to be useable for its intended purpose.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; rpld by #5740, eff 11-23-93; ss by #7158, eff 12-17-99; ss and moved by #8341, eff 4-25-05 (from Env-Wt 402.11) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.12 Frontage Less Than 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values, and provide sufficient area for construction of facilities, docks or piers permitted on property with less than 75' of shoreline frontage shall be no larger than 4 feet x 24 feet.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.13) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.13 Frontage Over 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values, provide sufficient area for construction of facilities, provide adequate area for boat maneuvering, and protect health, safety, and general welfare, there shall be a minimum of 75' of shoreline frontage on the property for the first 2-slip structure and an additional 75' of shoreline frontage on the property for each additional boating slip or securing location on a structure for non-commercial use. This section shall not be interpreted to prevent construction of a dock on lots with less than 75' of shoreline frontage as provided in Env-Wt 402.11.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; rpld by #4038, eff 4-10-86

New. #8341, eff 4-25-05 (from Env-Wt 402.14) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.14 Exceptions To Frontage Criteria. The standards in Env-Wt 402.11 and Env-Wt 402.12 shall be waived when evidence has been provided, in writing by the applicant, that:

- (a) Application of those standards would represent a hazard due to wind or other weather conditions;
- (b) The property has a hardship requiring the exception;
- (c) The sole practical method of transportation to the property is by boat;
- (d) The applicant's use of the waters is in the public interest; or
- (e) The construction has been modified to meet the considerations specified in Env-Wt 401.02, Env-Wt 402.12, and Env-Wt 402.13.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.15) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.15 Commercial Use - Municipal Review.

(a) Any new docking facility or additional docking or similar improvement, excluding repairs or replacements without expansion, that has any portion under commercial use shall comply with all local land-use controls for marinas, or appropriate non-residential land-use classification.

(b) The applicant shall submit a copy of the local permit or approval, or a letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations, to the department with the application or otherwise prior to the department making a decision on the application.

(c) Local regulations shall not restrict the sole and exclusive authority of the state to permit construction over, or dredge and fill in, great ponds or state-owned water bodies. If a municipality forwards a denial or does not respond to the department, the applicant may request a public hearing to waive the provisions of this section.

Source. #3075, eff 7-26-85; ss by 4038, eff 4-10-86; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.16) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.16 Marinas - Design Standards.

(a) Applicants for marina construction or expansion shall provide the department with evidence showing compliance with the following design standards:

(1) All marinas shall be designed to:

- a. Minimize visual impact;
- b. Avoid damage to the environment due to leakage or spills of fuels, lubricants, waste products, or other pollutants; and
- c. Not represent a hazard to navigation or interfere with abutting property values; and

(2) The standard for marinas shall be one slip for every 25' of shoreline. More slips shall be permitted if the marina is enclosed by land of the applicant, or other evidence is provided to the department which indicates that the increase is in the public interest. High demand for slips shall be insufficient to establish a public interest. If evidence is provided which shows that the project would pose a navigational hazard, fewer slips shall be permitted.

(b) Applicants for marina construction or expansion shall provide the department with plans showing the following:

- (1) Designated wash areas for seasonal vessel cleaning;
- (2) Storm water runoff and treatment designs;
- (3) Location of pumpout facility;
- (4) Location of abrasive blasting, painting operations, and hull sanding; and

(5) Location and disposal method for oil or other waste products.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90;
EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.17) (See
Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.17 Contiguous Frontage. All frontage considered in the application of Env-Wt 402.11, Env-Wt 402.12 and Env-Wt 402.15 shall be contiguous and owned by the same person.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by
#6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.18) (See
Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.18 Ownership.

(a) An applicant for a shoreline structure defined as major shall be the owner in fee of the affected frontage, unless the applicant has leased the property from the state pursuant to RSA 228:57-a.

(b) If the applicant leases the property from the state pursuant to RSA 228:57-a, the applicant shall:

(1) Provide a copy of the lease to the department with the application; and

(2) Inform the department of any changes in the status of the lease, whether such changes occur while the application is pending or after a permit has been issued.

(c) If the lease does not explicitly state that the applicant may place a shoreland structure defined as major on the leased property, the applicant shall provide written authorization for placement of the proposed structure from the New Hampshire department of transportation.

(d) The recipient of a permit to construct a shoreline structure(s) on property leased from the state pursuant to RSA 228:57-a shall:

(1) At the permittee's own cost and expense, remove the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake within 30 days of the earlier of:

a. The termination or expiration of the dock permit; or

b. A default under, termination, or expiration of the state lease; and

(2) Restore the lakebed and the leased state land to its original condition within 30 days of removing the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake.

(e) No permit shall be effective unless approved by the governor and executive council.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.19) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.19 Deed Restriction.

(a) Upon receipt of a permit, the applicant for a major docking facility in public waters shall file a deed restriction with the appropriate registry of deeds which limits the use of the docking facility to permitted conditions and dedicates an amount of shore frontage to that facility.

(b) The applicant shall provide a copy of the recorded deed restriction to the department.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.20) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.20 Registration.

(a) All permits for docking structures shall be recorded by the applicant with the appropriate registry of deeds in accordance with RSA 482-A:3, VI.

(b) The applicant shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #8067, eff 4-2-04; ss by #8341, eff 4-25-05 (from Env-Wt 402.21) (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 402.21 Modification of Existing Structures. The department shall not approve any change in size, location, or configuration of an existing structure unless the applicant demonstrates, and the department finds, that the modification is less environmentally-impacting or provides for fewer boat slips and less construction surface area over public submerged lands than the current configuration.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.22) (See Revision Note at chapter heading for Env-Wt 400)

PART Env-Wt 403 CRITERIA FOR INTAKE AND OUTFLOW STRUCTURES

Env-Wt 403.01 Intake Structures. An applicant shall demonstrate that intake structures meet the following criteria:

- (a) Inflow shall not lower water levels so that the habitat of finfish, crustacean, or shellfish is harmed;
- (b) Inflow shall not cause scouring or endanger vegetation, finfish, crustacea, shell-fish or wildlife;
and
- (c) The structure shall not endanger navigation, recreation, or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter
heading for Env-Wt 400)

Env-Wt 403.02 Outflow Structures. An applicant shall demonstrate that outflow structures shall meet the following criteria:

- (a) Outflow shall not cause scouring or endanger vegetation, finfish, crustacea, shellfish or wildlife;
and
- (b) The structure shall not endanger navigation, recreation, or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter
heading for Env-Wt 400)

Env-Wt 403.03 Dikes, Tide Dams, and Tide Gates. An applicant shall demonstrate that a project for a dike, tide dam, or tide gate meets the following criteria:

- (a) Flooding, loss of salinity, or de-watering shall not damage or destroy indigenous hydrophytic vegetation or habitat of finfish, crustacea, shellfish, or wildlife;
- (b) Adequate passage and rate of flow shall be maintained at appropriate times to allow migration of fish and other marine life;
- (c) The conveyance of runoff and flood waters shall not be prevented;
- (d) Projects shall not cause the permanent inundation of tidal wetlands; and
- (e) Projects shall not interfere with the normal ebb and flow of waters in tidal wetlands.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter
heading for Env-Wt 400)

PART Env-Wt 404 CRITERIA FOR SHORELINE STABILIZATION

Env-Wt 404.01 Least Intrusive Method. Shoreline stabilization shall be by the least intrusive but practical method.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 404.02 Diversion of Water. Diversion of stormwater run-off often provides effective and low maintenance erosion protection, and shall be used to the maximum extent practical.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 404.03 Vegetative Stabilization.

(a) Natural vegetation shall be left intact to the maximum extent possible. If space and soil conditions allow, unstable banks shall be cut back to a flatter slope, seeded, and replanted with native, non-invasive trees and shrubs.

(b) If space relative to the highest observable tide line, water turbulence, and soil conditions allow, the project shall include vegetation of existing sand beach or dunes or construction of vegetated sand dunes.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 404.04 Rip-rap.

(a) Rip-rap applications shall be considered only where the applicant demonstrates that anticipated turbulence, flows, restricted space, or similar factors render vegetative and diversion methods physically impractical.

(b) Applications for rip-rap shall include:

- (1) Designation of a minimum and maximum stone size;
- (2) Gradation;
- (3) Minimum rip-rap thickness;
- (4) Type of bedding for stone;
- (5) Cross-section and plan views of the proposed installation;
- (6) Sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline; and

(7) A description of anticipated turbulence, flows, restricted space, or similar factors that would render vegetative and diversion methods physically impractical.

(c) Applications to use rip-rap adjacent to great ponds or water bodies where the state holds fee simple ownership shall include a stamped surveyed plan showing the location of the normal high water shoreline and the footprint of the proposed project.

(d) Rip-rap shall be located shoreward of the normal high water shoreline, where practical, and shall not extend more than 2 feet lakeward of that line at any point.

(e) Stamped engineering plans shall be provided as part of any application for rip-rap in excess of 100 linear feet along the bank of a stream or river.

Source. #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400)

Env-Wt 404.05 Walls.

(a) The following requirements relative to walls shall apply to nontidal waters:

- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical;
- (2) Applications for walls shall include cross-section and plan views of the proposed installation and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
- (3) Walls on great ponds or water bodies where the state holds fee simple ownership shall be located on the shoreward side of the normal high-water shoreline;
- (4) Applications for walls adjacent to great ponds or water bodies where the state holds fee simple ownership shall include a stamped surveyed plan showing the location of the normal high water shoreline and the footprint of the proposed project.

(b) The following requirements relative to walls shall apply to tidal waters:

- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical. Wherever sufficient room exists, slopes should be cut back to eliminate a need for a wall;
- (2) Applications for walls shall include cross-section and plan views of the proposed installation and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
- (3) The face of a project shall be of angular texture to minimize reflected wave energy;
- (4) Only the minimal amount of fill shall be allowed to achieve stability of the structure;
- (5) Projects shall include weepholes to allow seepage of groundwater and to promote slope stability;

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(6) Projects shall not reflect or re-direct currents or wave energy towards adjacent wetlands or structures, or otherwise contribute to erosion; and

(7) A seawall shall be recurved, or concave on the seaward side, to reflect wave energy where space limitations allow.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter
heading for Env-Wt 400)

CHAPTER Env-Wt 500 PERMIT PROCEDURE

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 500 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 501 APPLICATION PROCEDURES

Env-Wt 501.01 Applications for Regular Review.

(a) Applications shall be submitted in a complete manner as specified in Env-Wt 300, Env-Wt 400, Env-Wt 500, and RSA 482-A before department action.

(b) The applicant shall submit 5 copies in accordance with (e), below. Photo copies shall be acceptable.

(c) At the time of filing, the applicant shall notify in writing all abutters, as specified in RSA 482-A, of the application. This notification shall not be required for logging operations, minimum impact agricultural projects, projects in utility rights-of-way, or public highway construction.

(d) By signing the application, the applicant shall:

(1) Certify that abutters have been notified in writing; and

(2) Authorize the municipal conservation commission to inspect the site of the proposed project.

(e) All 5 copies of the application and 5 copies of the data specified in Env-Wt 501.02 shall be presented to the town/city clerk of the municipality where the proposed project is located. All 5 copies shall be signed and dated by the town/city clerk. The clerk shall retain and distribute the 5 copies pursuant to RSA 482-A:3, I.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 501.02 Additional Data Requirements.

(a) The applicant shall submit the completed application to the department along with at least the following:

(1) A copy or tracing of a town tax map showing the property of the applicant, the location of the proposed project on the property, and the location of properties of abutters with each lot labeled with the abutter's name(s) and mailing address(es);

(2) A drawing or drawings not to exceed 28 inches by 40 inches in size showing:

- a. The name of the owner or applicant;
 - b. The tax map(s) and lot number(s);
 - c. The date of each plan and revision date if revised;
 - d. The person responsible for each portion of the plan, such as the wetland delineation, the survey, and the engineering;
 - e. An overview of the property and proposed impact areas in relation to the property lines;
 - f. The scale, if any, used on the plan, using standard measures of whole units such as an engineering rule of 1 to 10, metric engineering rule of 1 to 2.5, or architectural rule which clearly states the unit of measure;
 - g. If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - h. A labeled north-pointing arrow to indicate orientation;
 - i. A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - j. The location of wetlands delineated in accordance with Env-Wt 301.01, and whether any wetlands are designated as prime wetlands in accordance with RSA 482-A:15;
 - k. The name of the individual who did the wetlands delineation on the property;
 - l. The shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;
 - m. The location of the 100-year floodplain, if applicable to the proposed project;
 - n. If the topography is to be permanently altered, the existing proposed topography, including a reference elevation;
 - o. Labeled and lightly shaded or stippled areas indicating limits of all temporary and permanent impacts in jurisdiction, including wetlands, surface water and their banks, areas within 100 feet from the highest observable tide, and sand dunes;
 - p. The location of any wetland delineation observation plots if required by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987;
 - q. Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated and necessary;
 - r. If the project proposes the subdivision of land, information required by Env-Wt 304.09; and
 - s. If the project involves construction of a shoreline rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Env-Wt 404;
- (3) Dated, labeled photograph(s) mounted on 8½" x 11" sheets depicting portions of wetland, shoreline, or surface waters where proposed impact will occur, and showing all existing structures;

(4) A copy of the appropriate US geological survey map showing the location of the property and proposed project;

(5) A narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work; and

(6) The type of compensatory mitigation to be proposed by applicant and, if permittee-responsible mitigation will be proposed, the following, subject to (7), below:

a. Where preservation of an upland buffer is being proposed as compensatory mitigation:

i. A draft baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area; and

ii. A summary of the conservation values and goals for the proposed preservation area that will be incorporated into the final conservation easement;

b. Where restoration or creation is being proposed as compensatory mitigation, a draft plan noting the location of the restoration or creation project and a summary of the proposed measures to achieve wetland restoration or creation; and

c. An agreement in accordance with RSA 482-A:3, XIV(c)(3) on forms obtained from the department which specifies a date when a complete mitigation proposal as specified in Env-Wt 501.06 will be submitted to the department; and

(7) In lieu of submitting information pursuant to (6)a. and b. and an agreement pursuant to (6)c., the applicant may submit a complete mitigation proposal as specified in Env-Wt 501.06.

(b) In addition to the information required in (a) above, for projects in tidal wetlands, the applicant shall supply the following:

(1) The boundaries of the tidal buffer zone, edge of salt marsh vegetation, and sand dunes in the project vicinity shown on the drawing required in (a)(2) above;

(2) If the proposed project is located within 200 feet of any Federal Navigation Project, the distance between any structure(s) associated with the proposed project and the Federal Navigation Project site; and

(3) The name of the individual who conducted the delineation on the property.

(c) In addition to the information required in (a) above, for projects affecting surface water shoreline, the applicant shall supply the following:

(1) The general shape of the shoreline including the length of frontage and either:

a. The full water body elevation; or

b. The highest observable tidal line for tidal waters;

(2) The footprint of all existing and proposed structures on the property;

(3) The intended use of each proposed structure; and

(4) The distance from existing and proposed work to abutting property lines.

(d) In addition to the information required in (a), above, for projects within the protected shoreline-as defined by RSA 483-B, the applicant shall supply the following information:

- (1) The reference line;
- (2) The location of all existing structures between the primary building line and the reference line;
- (3) The location of all proposed structures; and
- (4) The total disturbed area within the protected shoreline.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7896, eff 5-22-03; amd by #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); amd by #8911, eff 6-20-07

Env-Wt 501.03 Identification of Applications. The bureau shall assign a file number and maintain a file on each application. This file shall be maintained for a minimum of 4 years from the date of the final decision on the application.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 501.04 Applications for Minimum Impact Projects.

- (a) Applications shall be either expedited or regular.
- (b) All minimum impact projects, except those that do not meet the expedited criteria, shall be subject to expedited review.
- (c) Expedited review shall not occur unless applications are complete as set out in Env-Wt 505.01 and conform to department rules and RSA 482-A.
- (d) The procedure for expedited review shall be followed as outlined in Env-Wt 505.02 and Env-Wt 506.02.
- (e) All minimum impact projects that do not comply with application completeness requirements for either the expedited review criteria for minimum impact projects under Env-Wt 505.01 or the application completeness requirements for seasonal dock projects under Env-Wt 506.01 and expedited review criteria for seasonal dock projects under Env-Wt 402.05 shall be subject to regular review pursuant to Env-Wt 501.
- (f) After-the-fact applications shall not be expedited.

Source. #8341, eff 4-25-05 (from Env-Wt 202.03) (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 501.05 Mitigation Sequencing Process. For a proposed project that is required to provide compensatory mitigation in accordance with Env-Wt 302.03, the following process shall be followed:

- (a) The applicant shall proceed in accordance with (b), below, for a proposed project that:
 - (1) Will fill less than one acre and meets the criteria for a United States Army Corps of Engineers state programmatic general permit (SPGP); or
 - (2) Will impact up to 3 acres, is a public roadway as defined in Env-Wt 807.01(b) or a public utility project as defined in Env-Wt 807.01(c), and meets the criteria for an SPGP;
- (b) The applicant for a project meeting the criteria of (a), above, shall:
 - (1) Evaluate permittee-responsible mitigation as defined in Env-Wt 802.04; and
 - (2) If permittee-responsible mitigation is not feasible, provide:
 - a. An explanation of what was considered and why preservation of an upland buffer as specified in Env-Wt 803.07(b) is not a feasible alternative;
 - b. An explanation of what was considered and why restoration or creation of wetlands on the subject property as specified in Env-Wt 803.07(c) is not a feasible alternative; and
 - c. A statement that payment of an in-lieu fee that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28 is the chosen form of mitigation, with the amount to be calculated in accordance with Env-Wt 803.04(c); and
- (c) For a proposed project that does not qualify under (a), above, the applicant shall propose permittee-responsible mitigation as defined in Env-Wt 802.04 by meeting the criteria set forth in Env-Wt 804 for upland buffer preservation or in Env-Wt 805 for wetland creation or restoration.

Source. #8911, eff 6-20-07

Env-Wt 501.06 Mitigation Proposal Completeness. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed complete such that the department can commence its technical review of the proposal:

- (a) Where preservation of an upland buffer is being proposed, information showing that the proposal meets the criteria specified in Env-Wt 804 together with the following:
 - (1) A final baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area;
 - (2) A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership which protects the conservation values in perpetuity, in accordance with Env-Wt 807.13;
 - (3) A surveyed plan, in accordance with Env-Wt 807.10, showing the location of the proposed conservation area boundaries; and
 - (4) A statement from the proposed grantee indicating that the proposed grantee will accept the

easement or fee simple deed;

(b) For any proposal calling for a transfer of easements or fee simple ownership, documentation showing that the proposed grantee is one of the following:

(1) A state natural resource agency such as the fish and game department or the department of resources and economic development;

(2) A municipality with a conservation commission in the town where the property is located; or

(3) A conservation organization such as a state-wide, regional, or local conservation organization that can provide documentation from the United States Internal Revenue Service stating that it is an income tax exempt, publicly supported corporation, pursuant to 501(c)(3) of the United States Internal Revenue Code; and

(c) For any proposal calling for a transfer of easements or fee simple ownership to a conservation organization, documentation showing that the conservation organization has:

(1) Accepted the Land Trust Alliance (LTA) standards and practices as specified in “LTA Standards and Practices”, revised 2004, or can show that it has adopted equivalent standards and practices; or

(2) A record of holding easements and managing them consistent with the purposes of the easements.

(d) Where restoration or creation is being proposed as compensatory mitigation, information showing that the proposal meets the criteria specified in Env-Wt 805 together with all plans and proposals required by Env-Wt 805.

(e) For an applicant who qualifies under Env-Wt 501.05(a) who has determined that permittee-responsible mitigation is not feasible as specified in Env-Wt 501.05(b)(2), the information required by Env-Wt 501.05(b)(2) and a preliminary estimate of the in lieu fee payment based on Env-Wt 803.04(c).

Source. #8911, eff 6-20-07

Env-Wt 501.07 Review of Compensatory Mitigation Proposals.

(a) If the applicant elects to submit preliminary information and an agreement under Env-Wt 501.02(a)(6) with the original application, the department shall review the information to determine whether the information is sufficient for the department to understand the nature and appropriateness of the proposed mitigation.

(b) If the applicant elects to submit a complete mitigation proposal under Env-Wt 501.02(a)(7) with the original application, the department shall review the information to ensure the minimum necessary compensatory mitigation components are included for technical review of the project.

(c) The department shall notify the applicant in writing of its determination under (a) or (b), above, as applicable. If the information does not meet the standard specified in (a) or (b), above, as applicable, the written notice shall specify the reason(s).

Source. #8911, eff 6-20-07

PART Env-Wt 502 GENERAL CONDITIONS APPLICABLE TO ALL PERMITS

Env-Wt 502.01 Duration of Permit. Issued permits and completed permit by notifications shall have a duration of 5 years except as follows:

(a) Public transportation projects that exceed the limits of the US army corps of engineers' New Hampshire programmatic general permit shall receive one permit extension, to a total of 10 years, provided the applicant:

(1) Receives an individual federal permit from the US Army Corps of Engineers; and

(2) Requests such an extension in writing from the department prior to the expiration of the original permit;

(b) Minimum impact forestry notifications submitted pursuant to RSA 482-A:3, V shall be valid for 2 years from date of issuance by the department of a completeness letter; and

(c) Gold dredge permits issued in accordance with RSA 482-A:3, XI shall expire at the end of the calendar year in which they are issued, as set forth in the statute.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7048, eff 6-29-99; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 502.02 Transferability.

(a) The department shall submit to governor and council all requests for transfer of permits for major projects that involve structures in great ponds or public-owned water bodies in the manner prescribed for permits under RSA 482-A:3, II.

(b) Permits shall be issued to land owners on whose land the project is located or attached or to party(ies) having financial or other legal interest in the property when the permitted project is proposed to be performed after transfer of title or when legal authority has been granted. For projects which have not been completed and when ownership or legal authority is to be changed, the department shall transfer the permit after receipt of a written request by the new owner or legal authority unless there is a pending enforcement case on the file. If transfer is approved, the new permittee shall be advised of all conditions, limitations, and special considerations pertinent to the approved project.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.03) (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 502.03 Filing Certificate of Compliance.

(a) The applicant shall file a completed certificate of compliance with the department upon completion of the work authorized under a permit.

(b) The certificate of compliance shall:

- (1) Identify the permit number and the date of permit issuance;
- (2) Specify the date the work was completed; and
- (3) Be signed by the applicant.

(c) The applicant's signature shall constitute certification that the project was completed in compliance with all conditions of the permit.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #4806, eff 4-27-90; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.04) (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 502.04 Repair or Rebuilding Structures.

(a) An application and permit shall be required prior to repairing, replacing, or rebuilding any portion of a structure located below the water surface at time of such repair or replacement. Structures requiring an application and permit shall include but not be limited to pilings, cribs, and breakwaters.

(b) The applicant shall provide proof that the structure the applicant is proposing to repair, replace, or rebuild, has been functional, intact in its current shape, dimensions, and configuration within 5 years of the proposed work and that it would be considered grandfathered as defined in Env-Wt 101.44.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.05) (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 502.05 Permit Acceptance. All permits for construction shall be signed by the applicant and the principal contractor hired to build or install the project prior to start of construction. Permits shall not be valid until signed as provided above.

Source. #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.06) (See Revision Note at chapter heading for Env-Wt 500)

PART Env-Wt 503 EMERGENCY PROCEDURES

Env-Wt 503.01 Emergency Approvals.

(a) Emergency work shall be authorized by the bureau administrator when a threat to public safety or public health exists or significant damage to private property is imminent and the event causing the emergency occurred within 5 days of the request for emergency approval.

(b) Emergency authorization shall be limited to temporary stabilization of the site or mitigation of the immediate threat.

(c) The bureau administrator shall create a record of such authorization containing a description of the emergency, the work to be performed, and a schedule ~~of~~ for the work.

(d) During a general or local disaster, work without a permit shall be allowed. All such work shall be reported to the department including description of work done.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 503.02 Action After Emergency.

(a) Subject to (b), below, the person responsible for the work shall submit a description of all work performed during an emergency, except for those projects classified minimum impact, in lieu of a permit application.

(b) Applications as required under Env-Wt 501 shall be submitted for any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

PART Env-Wt 504 SMALL MOTOR DREDGING PERMITS

Env-Wt 504.01 Persons Requiring a Permit.

(a) Any person operating a small motor dredge for the purpose of recreational mineral dredging shall post the permit in the immediate vicinity of the dredging operation.

(b) Each person 18 years of age or older who is participating in recreational dredging shall have his or her own permit.

(c) Participants who are 17 years of age or younger shall be accompanied by an adult who possesses a valid permit.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 504.02 Application Requirements.

(a) As part of the application, the applicant shall provide the department with:

- (1) A check or money order for the filing fee;
- (2) The applicant's name, mailing address, and daytime telephone number;
- (3) A signed statement certifying that the applicant has read and will comply with Env-Wt 304; and
- (4) Proof of New Hampshire residency, if claimed.

(b) Any applicant-claiming New Hampshire residency shall provide a photocopy of his or her New Hampshire driver license or New Hampshire nondriver ID, and shall clearly print the license or ID number on the application.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 504.03 Conservation Commission Review. The conservation commission intervention review of RSA 482-A:11, III shall not apply to this part as the permits are not specific to any town.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 504.04 Dredging Criteria. Recreational dredging operations shall be conducted in accordance with the criteria set by Env-Wt 304.14.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 505.01 Application Completeness Requirements. As part of the expedited minimum impact application, except for seasonal docks processed under Env-Wt 506, the applicant shall provide the department with:

- (a) Applicant name, mailing address, and daytime telephone number;
- (b) Location of proposed project;
- (c) An application fee for minimum impact projects as required by RSA 482-A:3, I;
- (d) Identification of appropriate minimum impact provision in Env-Wt 501.04;
- (e) A copy of town tax map showing the location of the proposed project in relation to abutters;
- (f) A list of abutters' names and mailing addresses to cross-reference with the tax map;
- (g) A copy of the appropriate US geological survey map with the property and project located;
- (h) An accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on areas in department jurisdiction detailing the precise location of the project;
- (i) Original photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact;
- (j) Name of water body or wetland where work is proposed;
- (k) Identification of the type of landform to be affected as follows:
 - (1) Salt marsh;
 - (2) Tidal water;
 - (3) Sand dune;
 - (4) Bog;
 - (5) Freshwater marsh;
 - (6) Swamp;
 - (7) Wet meadow;
 - (8) River;
 - (9) Perennial stream;

- (10) Seasonal stream;
 - (11) Lake;
 - (12) Upland tidal buffer zone; or
 - (13) Other;
- (l) A brief description of the project, outlining the scope of work to be performed;
- (m) A signed statement by the applicant certifying that the proposed project meets the conditions and limits of the designated minimum impact rule, as identified in Env-Wt 505.01(d), and that all abutters have been notified;
- (n) A signed statement for minimum impact projects that are submitted for repair or replacement of docking structures under Env-Wt 303.04(v), shall include certification that:
- (1) The structures have been in existence in the same location, configuration and construction type, and dimensions within the last 5 years;
 - (2) The existing structures have not been abandoned as specified in Env-Wt 101.01 or Env-Wt 303.05(a)(4); and
 - (3) The existing structures would be considered grandfathered in their current condition under Env-Wt 101.44; or
 - (4) The existing structures have been permitted in the same condition under a wetlands permit, and both (n)(1) and (n)(2) apply;
- (o) A signed statement by the town clerk certifying that the applicant has provided certified postal receipts of abutter notification, and that 5 copies of the application and plans have been received and distributed as required by RSA 482-A:3, I;
- (p) A signed statement by the county conservation district, where required by the appropriate minimum impact rule, certifying compliance with all conditions of that rule;
- (q) A signed statement by the municipal conservation commission certifying that the commission:
- (1) Waives its right to intervene per RSA 482-A:11, III;
 - (2) Recommends approval of the application; and
 - (3) Believes that the application and the submitted plans accurately represent the proposed project;
- (r) The number of linear feet of shoreline frontage for projects located on water bodies;
- (s) The linear distance of project from abutting property boundaries;
- (t) The type of dock construction;
- (u) The diameter of culvert(s) to be used for road or driveway crossings;
- (v) The additional information specified in Env-Wt 303.04(u) for minimum impact agricultural applications;

- (w) Plans for retaining walls, as specified in Env-Wt 404.05(a)(2);
- (x) Specifications and plans for rip-rap, as required by Env-Wt 404.04; and
- (y) A statement demonstrating that their proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction in accordance with Env-Wt 302.03.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97;

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #8165, eff 9-10-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 505.02 Expedited Review Procedures. Minimum impact projects identified for expedited review, except for minimum impact seasonal docks processed under Env-Wt 506, shall be processed in the following manner:

- (a) Applications shall be reviewed by the bureau staff for completeness and compliance with department rules;
- (b) The bureau shall approve the application or send a notice of deficiency to the applicant within 30 calendar days from receipt of the application by the department;
- (c) If the proposed project conforms to department rules and applicable laws, the bureau administrator or designee shall issue a wetlands permit;
- (d) The bureau shall send a notice identifying the deficiencies to the applicant if the application is incomplete or does not meet the department's rules or applicable laws.
- (e) An applicant may proceed with the proposed minimum impact project if the following conditions have been met:
 - (1) A complete application has been filed in accordance with Env-Wt 505.01 and the application and plans meet the criteria of Env-Wt 501.04 and Env-Wt 302.03;
 - (2) The department has received the application specified in (1) above, and the bureau has not mailed the notice with noted deficiencies to the person and mailing address listed on the application within 30 calendar days of the department's receipt of that application; and
 - (3) The applicant follows the conditions set out in Env-Wt 505.03.

Source. #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 505.03 Expedited Permit Conditions. The expedited minimum impact permits shall have the following conditions:

(a) Additional expedited minimum impact applications shall be accepted for the subject property for a period of 12 months only if the applicant demonstrates by plan that the additional project(s) are wholly unrelated or separate from the original application and when considered with the original application are not classified as minor or major;

(b) A permit for repair or replacement of an existing docking structure shall not preclude the department from taking any enforcement action or revocation if the department later determines that these "existing structures" were not previously permitted or grandfathered;

(c) Work authorized shall be carried out such that discharges in spawning or nursery areas during spawning seasons shall be avoided and impacts to such areas shall be avoided or minimized to the maximum extent practicable during all times of the year;

(d) Work shall be carried out in a time and manner such that disturbance to migratory waterfowl breeding areas and spawning areas shall be avoided;

(e) No fill shall be done to achieve septic setback and no dredging shall take place that would create violations of any set-backs specified in Env-Ws 1000;

(f) No fill shall be done for lot development;

(g) No fill shall take place in Atlantic white cedar swamps; and

(h) Applicants shall be advised that all work carried out prior to receiving a department wetlands permit shall not be covered under the Army Corps of Engineers State Programmatic General Permit issued on June 1, 1992 and amended on October 20, 1992 and amended on February 28, 1994 and might be in violation of federal law.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 505.04 Expedited Repair Contingency. When the bureau staff has reason to believe that an applicant's existing docking structure as proposed does not meet the criteria of Env-Wt 303.04(v), the applicant shall be required to submit proof as specified by Env-Wt 502.04.

Source. #5904, eff 9-30-94; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

PART Env-Wt 506 PERMIT BY NOTIFICATION

Env-Wt 506.01 Projects Qualifying for Permit by Notification.

(a) The following projects shall qualify for the permit by notification process:

- (1) The construction or modification of a seasonal pier or wharf, located on a stream or river, that meets the criteria in Env-Wt 303.04(a);
- (2) The repair or replacement of an existing retaining wall that meets the criteria in Env-Wt 303.04(c);
- (3) Maintenance dredging that meets the criteria in Env-Wt 303.04(k);
- (4) The construction of a temporary cofferdam and other water control devices that meets the criteria in Env-Wt 303.04(l);
- (5) The repair of an existing docking structure that meets the criteria in Env-Wt 303.04(v);
- (6) The excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, that meets the criteria in Env-Wt 303.04(w);
- (7) The maintenance, repair, or replacement of a nondocking structure that meets the criteria in Env-Wt 303.04(x);
- (8) The installation of a culvert or bridge and associated fill to permit vehicular access to a piece of property for a single family building lot or for noncommercial, recreational uses that meets the criteria in Env-Wt 303.04(z);
- (9) The replenishment of an existing beach that meets the criteria in Env-Wt 303.04(aa);
- (10) The construction of an anchoring pad for a seasonal dock that meets the criteria in Env-Wt 303.04(ab);
- (11) The installation of a seasonal boatlift that meets the criteria of Env-Wt 303.04(ac);
- (12) The installation of a personal watercraft lift that meets that criteria of Env-Wt 303.04(ad);
- (13) The installation of a residential utility line that meets the criteria of Env-Wt 303.04(ae);
- (14) Temporary impacts associated with the inspection, maintenance and repair of existing utility lines within an existing utility right-of-way that meet the criteria of Env-Wt 303.04(af).

(b) After-the-fact applications shall not qualify for the permit by notification process.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 506.02 Permit by Notification Procedures for Qualifying Projects. A project qualifying for permit by notification under Env-Wt 506.01 shall be processed in the following manner:

(a) The applicant shall file 5 copies of signed permit by notification forms with the town clerk in the town where the project is to occur;

(b) The town clerk shall sign all copies, distribute them in accordance with RSA 482-A:3, I, and forward one copy by certified mail to the department;

(c) After filing the completed permit by notification forms with the town clerk, the applicant may proceed with the project:

(1) After 10 days, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or

(2) After 25 days, unless disqualified from the permit by notification process;

(d) Once the applicant complies with (c)(1) or (2) above, the applicant shall post the completed and signed permit by notification form at the site prior to commencing the project;

(e) If the department determines that a permit by notification form is incomplete, the department shall send a notice of incompleteness to the applicant and the local governing body identifying any deficiencies and notifying the applicant that the applicant shall not proceed with the project;

(f) If the applicant provides the department and local governing body with the information necessary to correct all deficiencies cited pursuant to (e), above, within 20 days following issuance of the written notice of incompleteness, the applicant may proceed with the project as follows:

(1) After 10 days following receipt of the information by the department, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or

(2) After 25 days following receipt of the information by the department, unless the project is disqualified from the permit by notification process;

(g) If the applicant fails to provide the department and local governing body with the information necessary to correct all deficiencies cited pursuant to (e), above, within 20 days following issuance of the written notice of incompleteness, the notice of incompleteness shall disqualify the project from the permit by notification process provided the notice states in full the reasons why the project does not qualify for permit by notification review;

(h) Upon disqualification of the project from the permit by notification process, the applicant may refile a completed permit by notification form in accordance with this section, or file a standard or expedited application pursuant to Env-Wt 501 or Env-Wt 505 respectively.

(i) Within 10 days following completion of the project, the applicant shall submit to the department confirmation of completion of the project, by either paper copy or electronically, with dated, labeled, photograph(s), mounted on 8½" x 11" sheets if paper copy, or digital photo(s) if electronic, depicting the areas where the impact occurred.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 506.03 Notification Completeness Requirements for Projects Qualifying for Permit by Notification in Env-Wt 506.01. As part of the permit by notification process for projects classified under Env-Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae), and (af), the applicant shall file with the department:

(a) The applicant's name, mailing address, and daytime telephone number;

- (b) The street address of the proposed project site, if different from the address in (a), above;
- (c) A copy of the appropriate US geological survey map with the property and project located;
- (d) A copy of the town tax map showing the location of the proposed project;
- (e) A sketch plan showing the proposed project, including the following:
 - (1) An overview of the property and proposed impact areas in relation to the property lines;
 - (2) The scale, if any, used on the plan;
 - (3) If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - (4) A labeled north-pointing arrow to indicate orientation;
 - (5) A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - (6) The location of wetlands delineated in accordance with Env-Wt 301.01, shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;
 - (7) The location of the 100-year floodplain, if applicable to the proposed project;
 - (8) If the topography is to be permanently altered, the existing and proposed topography, including a reference to elevation;
 - (9) Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated as necessary; and
 - (10) For projects classified under Env-Wt 303.04(l), plans shall be stamped by a licensed professional engineer;
- (f) A written agreement with any abutters as required in Env-Wt 304.04(a), or Env-Wt 402.04 for docks, when work in jurisdiction will occur within 20 feet of the property line or imaginary extension thereof over surface waters;
- (g) Original, dated photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact;
- (h) A brief description of the project, outlining the scope of work to be performed, including a narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
- (i) For projects classified under Env-Wt 303.04(z) and Env-Wt 303.04(ae), a sketch plan identified in (e) above, that includes a wetlands delineation, in accordance with Env-Wt 301.01, of the project area, and that is:
 - (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
 - (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s);

(3) Signed by the landowner acting on his or her own behalf, when the landowner prepares the plan for the development of their primary residence, showing the impacts resulting from such development; or

(4) Stamped by a permitted septic system designer, permitted in accordance with RSA 485-A:35.

(j) An application fee for minimum impact projects as required by RSA 482-A:3, I; and

(k) A signed statement by the applicant certifying that the proposed project meets the conditions and requirements as identified in Env-Wt 303.04 and Env-Wt 506.04.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 506.04 Conditions for Permit by Notification for Qualifying Projects. A permit issued pursuant to the permit by notification procedure for a qualifying project shall have the following conditions:

(a) The qualifying project shall remain in compliance with all applicable criteria in Env-Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae) and (af) and the conditions listed in Env-Wt 304;

(b) Construction or modification shall be undertaken in compliance with RSA 483-B, the comprehensive shoreland protection act;

(c) For projects classified under Env-Wt 303.04(z) and Env-Wt 303.04(ae) involving stream impacts, the proposed project shall only impact intermittent streams as defined in Env-Wt 101.48.

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

PART Env-Wt 507 SEASONAL DOCK NOTIFICATION

Env-Wt 507.01 Qualification for Seasonal Dock Notification. A person may construct or modify a seasonal pier or wharf on any lake or pond without obtaining a permit from the department, provided the project meets the criteria in RSA 482-A:3, IV-a, and the individual notifies the department pursuant to the procedures in Env-Wt 507.02.

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 507.02 Notification Procedures for Qualifying Seasonal Dock Projects. A minimum impact seasonal dock on a lake or pond qualifying for the notification process pursuant to RSA 482-A:3, IV-a shall be processed in the following manner:

(a) The applicant shall submit to the department all information required by RSA 482-A:3, IV-a for a review by the department;

(b) The department shall review the information submitted;

(c) The applicant may proceed with the proposed project, exempt from permitting requirements, if the applicant has filed the information required in Env-Wt 507.03 with the department, and the information submitted meets the requirements established in RSA 482-A:3, IV-a;

(d) If the department determines that the information provided is incomplete, the department shall send a notice of incompleteness to the applicant identifying any deficiencies;

(e) If the applicant fails to provide the information necessary to correct any deficiencies within 20 days following issuance of the written notice of incompleteness from the department sent pursuant to (c), above, the notice shall serve to disqualify the project from the notification process provided the notice states in full the reasons why the project does not meet the notification requirements; and

(f) Upon disqualification of the project from the notification process, the applicant may resubmit a notification in accordance with this section, for qualifying seasonal dock projects or, if applicable, submit a permit application using the standard or expedited application process pursuant respectively to Env-Wt 501 and Env-Wt 505.

Source. #7988, eff 11-21-03, ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 507.03 Notification Completeness Requirements for Qualifying Seasonal Dock Projects. In order for a seasonal dock to qualify for the notification process, an applicant shall submit to the department, on the department's appropriate notification form:

- (a) The information required by RSA 482-A:3, IV-a; and
- (b) Certification that the applicant intends to meet all project criteria specified in RSA 482-A:3 IV-a, (a) through (i).

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

PART Env-Wt 508 SUSPENSION, REVOCATION, OR MODIFICATION OF PERMITS

Env-Wt 508.01 Purpose. The purpose of this part is to establish the procedures to suspend, revoke, or modify a permit issued under RSA 482-A or a waiver issued under Env-Wt 204.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

Env-Wt 508.02 Suspension, Revocation, or Modification of Permits.

(a) The department shall initiate a proceeding to suspend, revoke, or modify a wetlands permit whenever the department receives credible information that supports a conclusion that the owner or contractor is not in compliance with the terms of the permit.

(b) To initiate the proceeding, the department shall notify the owner and contractor, if known to the department, in writing of:

- (1) The intention to suspend, revoke, or modify the permit, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the owner or contractor, or both, shall be given an opportunity to show cause why the proposed action should not be taken.

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and Env-C 200 relative to adjudicative proceedings.

- (d) After the hearing, the department shall revoke the permit if the department determines that:
 - (1) The permit would not have been issued if the information submitted had been true, complete, and not misleading; and
 - (2) The project for which the permit was obtained can not be made to conform to applicable requirements.
- (e) After the hearing, the department shall suspend the permit if the department determines that:
 - (1) The permit would not have been issued if the information submitted had been true, complete, and not misleading; and
 - (2) The project for which the permit was obtained can be made to conform to applicable requirements.
- (f) If a permit is suspended pursuant to (e), above, the department shall reinstate the permit upon receiving proof from the recipient that the project meets applicable requirements for approval.
- (g) If as a result of the hearing the department determines that a modification to the permit is required in order to bring the permit and the project into compliance with applicable requirements, the department shall issue a modified permit.
- (h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.
- (i) Any person aggrieved by the decision may request reconsideration of the decision pursuant to Env-Wt 203.02 and appeal the decision to the Wetlands Council in accordance with RSA 482-A:10 and Env-WtC 200.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500)

CHAPTER Env-Wt 600 TIDAL WETLANDS

REVISION NOTE:

Document #5185, effective 7-23-91, changed the title of Chapter Env-Wt 600 from Coastal Wetlands to Tidal Wetlands. Doc. #5185 has also repealed Parts 602, 603, 604, 605, and 607. The rules in these parts were amended and incorporated into Chapter Env-Wt 300 by Document #5186, effective 7-23-91. See the revision note at the chapter heading for Chapter Env-Wt 300.

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 600 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 601 DEFINITIONS - REPEALED

REVISION NOTE:

Document #5551, effective 1-5-93, repealed Part Env-Wt 601 entitled "Definitions." Many of the definitions contained in former Part Env-Wt 601 had been earlier amended and incorporated by Document #5536, effective 12-23-92, into Part Env-Wt 101 entitled "Definitions." See revision note at the part heading for Part Env-Wt 101. The prior filings for former Part Env-Wt 601 included the following documents:

#2923, eff 12-10-84
 #4297, eff 7-23-87
 #5028, eff 12-20-90

Please note that some of the rules in former Part Env-Wt 601 were out of effect between 12-10-90 and 12-20-90.

PARTS Env-Wt 602 through Env-Wt 605 - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90; amd by #3077, eff 7-26-85; amd by #4297, eff 7-23-87; ss by #5028, eff 12-20-90; rpld by #5185, eff 7-23-91 (See first Revision Note at chapter heading of Env-Wt 600)

PART Env-Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 606.01 Fill Criteria.

- (a) Fill shall be distributed in conformance with existing topography.
- (b) Fill shall not cause shoaling.
- (c) Fill shall not increase wave height.
- (d) Fill shall be compatible with existing grain size and distribution.

- (e) Fill shall be staked and measured by the department.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

New. #8341, eff 4-25-05 (from Env-Wt 606.02) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.02 Breakwater Criteria.

- (a) Breakwaters shall not hinder or prevent flushing of coastal areas.
- (b) Breakwaters shall not create current or waves that present a danger to small watercraft.
- (c) Breakwaters shall not create nor cause sediment deposits.
- (d) Breakwaters shall meet the criteria of Env-Wt 402.06.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.03) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.03 Piers, Docks, Wharves, and Floats Criteria.

- (a) Projects shall be designed such that supporting cribs, piles, and caissons occupy no more than 5 percent of total volume under the structure at mean high water to allow most wave and current energy to pass through, and prevent deepening of the area.
- (b) Piles and cribs shall not be placed any closer than 12 feet apart.
- (c) Superstructures shall not completely shield the underlying area from direct sunlight.
- (d) All floats shall be anchored, held by piles, or made fast to the shore or dock, to prevent substantial changes in their positions.
- (e) Floats that are not linked to the shore by ramps or piles, but are anchored, shall not exceed 400 square feet.
- (f) All floats and floating structures or sections thereof, shall be positioned waterward of any vegetated wetlands or vegetated shallows.

(g) Piers shall meet the criteria of Env-Wt 402.01, Env-Wt 402.02, Env-Wt 402.04, and Env-Wt 402.05.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.05) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.04 Jetty Criteria. The following shall apply to jetties:

- (a) Jetties shall be the minimum length necessary to reduce shoaling of the inlet;
- (b) Jetties shall be an adequate height to trap sediment completely;
- (c) A system of replenishment shall be designed and maintained to prevent the deepening of down drift areas due to the interruption of longshore sediment drift.
- (d) Jetties shall not prevent proper flushing of coastal areas; and
- (e) Jetties shall meet the criteria of Env-Wt 402.06.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Env-Wt 403.03)

New. #8341, eff 4-25-05 (from Env-Wt 606.06) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.05 Mooring and Marina Criteria.

- (a) Projects shall be located waterward of wetlands vegetation and vegetated shallows.
- (b) Projects shall not be located in areas where tides, currents, and waves may present a hazard.
- (c) Projects shall not remove amounts of water space in an area from accessibility to water craft.
- (d) Any person who wishes to install a mooring, as defined in Env-Wt 101.58, shall direct inquiries to the pease development authority, division of ports and harbors, or harbor master.
- (e) Marinas shall meet the criteria of Env-Wt 402.15.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.08) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.06 Pile, Crib, and Caisson Criteria.

- (a) Open piles shall be the least impacting alternative of permanent docking construction.
- (b) Crib and caisson supported structures shall be authorized only when the applicant offers clear evidence that alternative constructions would be impractical.
- (c) Cribs and caissons shall not be allowed in areas of vegetation or wildlife, fish, or crustacean habitat.
- (d) Materials used for fill within any crib or caisson shall be of a minimum size that exceeds the largest opening in the walls.

Source. #2923, eff 12-10-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.09) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.07 Utility Line, Pole, Tower, and Antennae Criteria.

- (a) Projects shall not endanger finfish, shellfish, crustacea, or wildlife attracted to wetlands areas.
- (b) Projects shall not significantly disturb underground or surface water flow.
- (c) Projects shall not endanger the navigation, recreation, or commerce of the general public.

Source. #2923, eff 12-10-84; amd by #4506, eff 10-13-88; ss by #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Env-Wt 404.05)

New. #8341, eff 4-25-05 (from Env-Wt 606.12) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.08 Boardwalk Criteria.

- (a) Projects shall be elevated such that no area under the structure shall be completely shaded from the sun.
- (b) Superstructures of projects shall be of slatted construction to allow circulation of air and water, and allow the penetration of light.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.13) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.09 Trails, Roadways, Access, and Boat Ramps.

- (a) Projects shall be of the minimum size necessary to bear expected vehicular traffic.
- (b) Projects shall be of the lightest construction possible and elevated on piles where possible.
- (c) Access projects shall be temporary.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.14) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.10 Boathouses and Shoreline Slips. Boathouses in or over the waters and wetlands and slips dug into the shore shall not be approved.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

New. #8341, eff 4-25-05 (from Env-Wt 606.15) (See second Revision Note at chapter heading of Env-Wt 600)

Env-Wt 606.11 Part Taking Precedence. Env-Wt 606 shall supersede Env-Wt 402 when projects are located in coastal wetlands. Projects exceeding or violating these criteria shall not be classified as minimum impact.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Part Env-Wt 403)

New. #8341, eff 4-25-05 (from Env-Wt 606.17) (See second Revision Note at chapter heading of Env-Wt 600)

CHAPTER Env-Wt 700 PRIME WETLANDS

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 700 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 701 CRITERIA AND EVALUATION

Env-Wt 701.01 Purpose. The purpose of these rules is to provide criteria to municipalities for use to designate wetlands of significant value that are worthy of extra protection because of their uniqueness, fragility, and/or unspoiled character pursuant to RSA 482-A:15.

Source. #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 701.02 Identification of Wetlands for Consideration as Prime.

(a) All wetlands greater than 2.0 acres in size in the municipality shall be identified. Wetlands smaller than 2.0 acres may be identified and included in the functional ranking.

(b) After wetlands have been identified, the municipality may set threshold conditions for one or more measurable functions, such as size. A wetland that does not meet or exceed the threshold conditions shall be dropped from further consideration unless it can be shown to support a rare species, provide critical wildlife habitat, or have known historical significance.

(c) Identified wetlands that have not been eliminated by threshold conditions shall be ranked for each of the adopted functional values. Evaluation shall be done using the Method for Comparative Evaluation of Nontidal Wetlands in New Hampshire (1991), or Method for the Evaluation and Inventory of Vegetated Tidal Marshes in New Hampshire (Coastal Method) (1993). If an alternative method is used the cited reference shall be identified and the reasons for using the alternative method shall be explained.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 701.03 Selection of Evaluation Criteria.

(a) The municipality shall use 10 of the following 14 wetlands functions in their evaluation of the identified wetlands in designating the wetlands as prime:

(1) Ecological integrity;

- (2) Wildlife habitat;
 - (3) Finfish habitat;
 - (4) Educational potential;
 - (5) Visual/aesthetic quality;
 - (6) Water based recreation;
 - (7) Flood control potential;
 - (8) Ground water use potential;
 - (9) Sediment trapping;
 - (10) Nutrient attenuation;
 - (11) Shoreline anchoring and dissipation of erosive forces;
 - (12) Urban quality of life potential;
 - (13) Historical site potential; and
 - (14) Noteworthiness.
- (b) Up to 3 additional functions may be added if the municipality provides justification for the additions.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97,
EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter
heading of Env-Wt 700)

Env-Wt 701.04 Selection of Designated Prime Wetlands.

(a) Selection of prime wetlands shall be based on the ranking of relative functional values described in Env-Wt 701.02 and Env-Wt 701.03 except as provided in (b) below.

(b) In addition to their relative ranking, wetlands designated as prime shall meet the following minimum criteria:

- (1) The wetlands shall have the presence of hydric soils, hydrophytic vegetation, and wetlands hydrology; and
- (2) At least 50% of the prime wetland shall have very poorly drained soils and the remaining soils shall be poorly drained soils.

(c) Designated prime wetlands boundaries shall be walked and verified by the municipality or its authorized agent where landowner permission can be obtained.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

PART Env-Wt 702 SUBMISSION

Env-Wt 702.01 Report. The municipality, or its authorized agent, shall prepare a report which shall correlate each prime wetland by name or number to a map or maps, describe the methodology used, and present the specific evaluation data for each wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 702.02 Map Format.

- (a) The map scale shall be such that 1" equals 1,000 feet or less.
- (b) The map or maps shall delineate each prime wetland with an exterior outline defined to an accuracy of within approximately 100 feet in location, and property boundaries shall be shown.
- (c) The most accurate maps available to a municipality shall be used.
- (d) Map sheets submitted to the department shall not exceed a size of 28 inches by 40 inches and shall have a one-inch border and title block with scale and legend.
- (e) State coordinate reference points shall be marked on the map.
- (f) Maps shall contain clear identification of the prime wetlands.
- (g) Blue or black ink shall be used to identify prime wetlands perimeters.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; and by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 702.03 Acceptance. A review of the submission from each municipality shall be conducted by the department for compliance to the requirements of report and format. The department shall not act upon an application that is incomplete or fails to comply with the format or criteria set by the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

PART Env-Wt 703 PERMIT PROCESS

Env-Wt 703.01 Criteria for Approval.

(a) The department shall review an application indicating that a project will be in or adjacent to a prime wetland in accordance with (b) below.

(b) Prior to approving an application for any project in or contiguous to a prime wetlands, the applicant shall show, and the department shall find, as required under RSA 482-A:11, IV, based on clear and convincing evidence, that:

- (1) There will be no significant net loss of values set forth in RSA 482-A:1;
- (2) The project is consistent with the purpose specified in RSA 482-A:1;
- (3) The project could not be relocated to avoid impacts on prime wetlands without either reducing the public value of the project, or negatively affecting the public health or safety;
- (4) The project's impacts on prime wetlands are the minimum practical without either reducing the public value of the project, or negatively affecting the public health or safety; and
- (5) The project incorporates appropriate and practicable compensatory mitigation for each of the wetland functions and values of RSA 482-A:1, and each of the functions and values ranked by the municipality, that are impacted by the project. The mitigation proposed shall be appropriate in terms of matching the proposed benefit given the relative harm of the project. The mitigation shall be practicable given the technology available at the time of the application to the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 703.02 Criteria for Mitigation and Compensation.

(a) Compensatory mitigation of lost or reduced wetland functions shall be within the physical boundaries of the project where possible and appropriate.

(b) Off-site compensation of a wetland function, except mitigation for lost flood storage capacity, shall be considered if the applicant shows, and the department finds, that:

- (1) The wetland function cannot be compensated on-site; or attempting to compensate on-site would have adverse affect on the value of other wetlands functions, the ecological value of adjacent environments, or the public health or safety; and
- (2) The off-site compensation provides equal or greater value for that function than the value lost as a result of the proposed project.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 703.03 Public Hearing. A public hearing shall be held by the department prior to approval of an application for any project in or contiguous to a prime wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 703.04 Delineation of Prime Wetland. If the applicant contests the boundary of a prime wetland, or wishes a more precise delineation of that boundary at a project site than provided by Env-Wt 702.02, the applicant may present data and evidence to the department and to the local conservation commission, if any, or the local governing body relative to the correct location of the boundary. In the event of a dispute, the final delineation shall be determined by the department based on the data and evidence submitted.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

PART Env-Wt 704 NOTIFICATION PERMIT ISSUANCE AND APPEAL

Env-Wt 704.01 Permit Issuance. No permit shall be issued until 20 calendar days after notification of the department's decision has been given to the municipal conservation commission, planning board, municipal executive body, applicant, and other interested parties who have entered written testimony or attended the public hearing.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

Env-Wt 704.02 Appeal. Any party to a proceeding may request reconsideration within 20 calendar days after notification of a decision to approve or deny a project involving prime wetlands. An appeal shall include grounds for a rehearing or new relevant information that was not available to the department at the time of its decision.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700)

CHAPTER Env-Wt 800 COMPENSATORY MITIGATION

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 800 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 801 PURPOSE, APPLICABILITY, AND TYPE OF COMPENSATORY MITIGATION REQUIRED

Env-Wt 801.01 Purpose. The purpose of this chapter is to establish the criteria and procedures for submittal and review of compensatory mitigation proposals that compensate for the loss of wetland functions and values.

Source. #4352, eff 1-4-88; ss by #5762, eff 12-21-93; amd by #6219, eff 4-4-96; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97; repealed and moved by #7205, eff 2-24-00 (See Env-C 614 Administrative Fines)

New. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 801.02 Applicability. This chapter shall apply to all compensatory mitigation proposals required by Env-Wt 302.03.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 801.03 Type of Compensatory Mitigation Required.

(a) For proposed activities that do not qualify under RSA 482-A:28 for payment of a fee in lieu of other compensatory mitigation, the proposed mitigation shall be permittee-responsible mitigation as defined in Env-Wt 802.04.

(b) For proposed activities that do qualify under RSA 482-A:28 for payment of a fee in lieu of other compensatory mitigation, the procedure for submittal and review of compensatory mitigation proposals shall be as specified in (c) and (d), below.

(c) The applicant shall first consider permittee-responsible mitigation opportunities and if permittee-responsible mitigation is feasible, the applicant shall propose such mitigation.

(d) If permittee-responsible mitigation is not feasible, the applicant shall provide:

(1) The explanation and documentation relative to preservation of upland buffer specified in Env-Wt 803.07(b);

(2) The explanation and documentation relative to restoration and creation of wetlands on the property specified in Env-Wt 803.07(c); and

(3) Payment of an in-lieu fee that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28.

Source. #8911, eff 6-20-07

PART Env-Wt 802 DEFINITIONS

Env-Wt 802.01 “Conservation easement” means a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land in order to protect its conservation values.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.02 “Conservation interest” means:

(a) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or

(b) A conservation easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.03 “In-lieu fee payment” means a form of compensatory mitigation where funds are provided as contemplated by RSA 482-A:28 in lieu of completing permittee-responsible mitigation.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.04 “Permittee-responsible mitigation” means a form of compensatory mitigation where an aquatic resource restoration or creation project in accordance with Env-Wt 804 or a preservation project in accordance with Env-Wt 805 is undertaken by the permittee, for which the permittee retains full responsibility.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.05 “Qualified Professional” means an individual with a combination of education and experience regarding identification and understanding of hydric soils, hydrophytic vegetation, and wetland hydrology, sufficient to enable the individual to evaluate wetland systems and to create the conditions necessary to sustain a wetland ecosystem.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

PART Env-Wt 803 COMPENSATORY MITIGATION PROPOSALS

Env-Wt 803.01 Permittee-Responsible Mitigation Proposals. For a project for which permittee-responsible mitigation is proposed, the applicant shall submit:

- (a) A plan and a report, prepared by a qualified professional, that:
 - (1) Identifies the size of the impact to the jurisdictional area(s);
 - (2) Identifies the type(s) of jurisdictional area(s) to be impacted, as classified by the applicant in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979, reprinted 1992;
 - (3) Identifies the location of the mitigation site relative to other protected lands with an explanation of how the site meets the goals stated in Env-Wt 803.03;
 - (4) Explains why the mitigation site comprises a resource with a functional value equal to or greater than the jurisdictional area(s) impacted by the project;
 - (5) Includes a detailed account of the compensatory mitigation recommendations provided by the conservation commission or governing body from the town in which the project is located, if any; and
 - (6) For a project having impacts within a designated river corridor as defined by RSA 483:4, XVIII, includes a detailed account of the recommendations provided by the local river management advisory committee established pursuant to RSA 483:8-a; and
- (b) A functional assessment, prepared by a qualified professional, of the impacted jurisdictional area(s) and proposed mitigation site(s) using:
 - (1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition; and
 - (2) Data on the surrounding area including, but not limited to:
 - a. Land use;
 - b. Soils;
 - c. Habitat;
 - d. Natural community classification in accordance with the “Natural Community Systems of New Hampshire, prepared by the NH department of resources and economic development, natural heritage bureau (DRED-NHB), and The Nature Conservancy (TNC), dated December 2005;
 - e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
 - f. Exemplary natural communities identified by the DRED-NHB.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.02 In-Lieu Fee Mitigation Proposals. For a project for which compensatory mitigation is proposed as an in-lieu fee payment, the applicant shall submit:

- (a) A plan and a report, prepared by the applicant or a qualified professional, that identifies:
 - (1) The size of the impact to the jurisdictional area(s);
 - (2) The type(s) of jurisdictional area(s) to be impacted; and
 - (3) An explanation of what factors were considered relative to preservation of uplands or restoration or creation of wetlands, and how those factors affected the applicant's decision that permittee-responsible mitigation opportunities are not practicable and a payment is allowed under Env-Wt 803.07; and
- (b) A functional assessment, prepared by a qualified professional, of the impacted jurisdictional area(s) using:
 - (1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition; and
 - (2) Data on the surrounding area including, but not limited to:
 - a. Land use;
 - b. Soils;
 - c. Habitat;
 - d. Natural community classification in accordance with the "Natural Community Systems of New Hampshire", prepared by the DRED-NHB and TNC, dated December 2005;
 - e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
 - f. Exemplary natural communities identified by the DRED-NHB.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.03 Compensatory Mitigation Site Location. For a project for which permittee-responsible mitigation is proposed, the applicant shall give preference to mitigation site(s) that:

- (a) Are located in the same watershed, as defined by Env-Wt 101.97, as the impacted jurisdictional area(s); and
- (b) Abut lands that are already subject to a conservation interest.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.04 Compensation Amount.

(a) The applicant may propose a combination of compensatory mitigation types, listed in Table 800-1, to meet the requirements of this section.

(b) For a project for which permittee-responsible mitigation is proposed, the department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.

(c) As required by RSA 482-A:30, the department shall calculate the amount of an in-lieu fee payment by summing the following items:

(1) The cost that would have been incurred if a wetland of the same type was constructed at the ratios listed in Table 800-1 based on a price of \$65,000 per acre of wetland created, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II;

(2) The area of wetlands that would need to be constructed, at the ratios listed in Table 800-1, times the cost of land where the impact is occurring as calculated by the assessed land values determined by the NH department of revenue administration which are equalized and divided by the number of acres in each municipality to yield a per acre equalized land value; and

(3) An administrative cost equaling 5% of the sum of (c)(1) and (2), above.

(d) For a project for which the applicant proposes a combination of permittee-responsible mitigation and an in-lieu fee payment, the department shall not require the applicant to propose a combined total that exceeds the mitigation ratios as listed in Table 800-1.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.05 Compensatory Mitigation Ratios. For permittee-responsible mitigation, the applicant shall demonstrate that the compensatory mitigation plan meets or exceeds the ratios listed in Table 800-1, relative to the amount of impacted jurisdictional areas:

TABLE 800-1 Minimum Compensatory Mitigation Ratios

Resource Type	Creation	Restoration	Preservation of Upland Buffer
Bog	N/A	2:1	15:1
Tidal Wetlands	3:1	2:1	15:1
Forested	1.5:1	1.5:1	10:1
Undeveloped Tidal Buffer Zone	N/A	2:1	3:1
All Other Jurisdictional Areas	1.5:1	1:1	10:1

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.06 Alternative Compensatory Mitigation Proposals.

(a) Compensatory mitigation proposals shall meet or exceed the ratios listed in Table 800-1, unless the applicant proposes an alternative that will have greater benefit to water quality, wildlife and their habitat(s), or other functions and values of wetlands and surface waters identified in RSA 482-A:1 or to one or more of the following:

- (1) Exemplary natural communities as identified by the DRED-NHB;
- (2) Habitat that supports rare, threatened, or endangered species, or species of concern, as identified by the natural heritage bureau or by the New Hampshire department of fish and game's New Hampshire Wildlife Action Plan, 2005; or
- (3) Ecologically important lands as designated or similarly identified by the local river management advisory committee, municipality or other state or federal agencies for protection of biodiversity values such as those listed in (1) or (2), above.

(b) An alternative compensatory mitigation proposal may include restoration of functions within a degraded jurisdictional area.

(c) An alternative compensatory mitigation proposal shall meet all other applicable requirements of Env-Wt 800.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 803.07 Criteria for Acceptance of In-Lieu Fee Payments.

(a) An in-lieu fee payment shall not substitute for the requirement to avoid or minimize impacts per Env-Wt 302.03.

(b) An applicant shall evaluate available upland buffer preservation opportunities in accordance with Env-Wt 804, and provide documentation and an explanation of how the upland buffer areas are not practicable based on the following:

- (1) The property has upland and wetland areas remaining after the development has been designed, but does not meet or exceed the ratios in Table 800-1 or can not meet the buffer requirement in Env-Wt 804.02;
- (2) Preservation was discussed by the municipal conservation commission and acceptance of the easement was declined as an option, as demonstrated by minutes from the meeting(s) at which the proposal was considered or a letter signed by the conservation commission; and
- (3) Acceptance of the easement was declined by other conservation organizations as cited in Env-Wt 501.06(b)(3), as demonstrated by written responses from such organizations.

(c) An applicant shall evaluate available restoration and creation opportunities in accordance with Env-Wt 805 and provide documentation and an explanation of what was considered and why restoration or creation will not produce a valuable and sustainable jurisdictional area.

(d) An in-lieu fee payment shall only be accepted in the following circumstances:

- (1) As specified in RSA 482-A:28, I, the project impacts less than one acre of wetlands and meets the criteria for a U.S. Army Corps of Engineers state programmatic general permit; or

(2) As specified in RSA 482-A:28, II, the project is for a public roadway or public utility, exceeds one acre of impact, and meets the criteria for a U.S. Army Corps of Engineers state programmatic general permit.

(e) The department shall accept a proposal for an in-lieu fee payment if the proposal meets the requirements of (b), (c), and (d), above, and the mitigation types or combination of mitigation types listed in Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.08 Notification of Decision on a Proposed In-Lieu Fee Payment.

(a) The department shall determine whether it is appropriate for an applicant proposing a dredge or fill activity to provide an in-lieu fee payment instead of providing permittee-responsible mitigation, by reviewing the functional assessment and alternatives provided and applying the criteria specified in Env-Wt 803.07.

(b) The department shall notify the applicant and the town in which the project is located in writing of its decision on the proposal.

(c) If the project meets the criteria for in-lieu fee payment, the notice issued pursuant to (b), above, shall include:

(1) A calculation of the payment amount that the applicant must pay prior to issuance of a permit, as specified in Env-Wt 806.05; and

(2) A statement that if the in-lieu fee payment is not paid as specified in Env-Wt 806.05, the department will deny the permit.

(d) If the project does not qualify for an in-lieu fee payment, the notice issued pursuant to (b), above, shall specify the reason(s) and a date by which the applicant must submit a revised mitigation proposal.

(e) If the in-lieu fee payment is not paid as specified in these rules, or if the applicant does not submit a revised mitigation proposal required under (d), above, the department shall deny the permit.

(f) Upon receiving notification that a proposal for in-lieu fee payment has been accepted and that the permit will be issued once payment has been received, the applicant shall transmit the payment to the department.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

PART Env-Wt 804 UPLAND BUFFER PRESERVATION

Env-Wt 804.01 Location and Value. An upland buffer preservation area offered for compensatory mitigation shall:

(a) Be adjacent to a jurisdictional area that meets or exceeds the function and values of the jurisdictional areas to be impacted by the project, as determined through a functional assessment;

(b) Benefit the resource to be protected by maintaining water quality, wildlife habitat, or other functions and values of wetlands and surface waters; and

(c) Be consistent with the local and regional land use conservation goals and any applicable river corridor management plans developed per RSA 483:10.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 804.02 Dimensions. The upland buffer shall be a minimum of 100 feet wide and contiguous with the protected resource(s).

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 804.03 Incorporated Jurisdictional Areas. An area subject to preservation may incorporate a jurisdictional area provided:

(a) The upland buffer entirely surrounds the jurisdictional area or at least abuts those undeveloped upland portions under sole ownership; and

(b) The upland buffer area is equal to or greater than 50% of the minimum total compensatory mitigation area required under Env-Wt 803.05.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 804.04 Criteria for Evaluation of an Upland Buffer. To propose compensatory mitigation based on upland buffer preservation, the applicant shall:

(a) Submit a functional assessment of the jurisdictional area(s) to be impacted;

(b) Describe how the property proposed for preservation will be legally protected in perpetuity;

(c) If protective measures already exist on the mitigation site(s), identify the existing protective measures and describe how the proposed additional measures would provide greater protection of the aquatic resources on the site(s);

(d) Delineate all wetlands within the proposed compensatory mitigation area and all contiguous wetlands and surface waters as follows:

(1) For compensatory mitigation areas comprising 20 acres or more, delineation shall be completed:

a. By a certified wetland scientist in accordance with Env-Wt 301.01; or

b. By interpretation of aerial photography, published soil surveys, U.S. Fish and Wildlife Service National Wetland Inventory maps, or other available information; and

(2) For compensatory mitigation areas comprising less than 20 acres, delineation shall be completed by a certified wetland scientist in accordance with Env-Wt 301.01;

(e) Identify the property or portion of property on a tax map and USGS quad map;

- (f) Identify the easement holder, which shall not be the owner in fee of the property;
- (g) Submit a property survey plan in accordance with Env-Wt 807.10 that identifies the boundaries of the compensatory mitigation area;
- (h) Submit a draft legal description of the compensatory mitigation area;
- (i) Submit the items required by Env-Wt 501.02(a)(6) or (a)(7);
- (j) Submit color photographs to illustrate important site features with location(s) noted on the property survey plan, including the location(s) of:
 - (1) Significant ecological features;
 - (2) Existing buildings, structures, or trails;
 - (3) Wells;
 - (4) Power lines or pipelines;
 - (5) Historic resources; and
 - (6) Other improvements that will be in place at the time of the establishment of the compensatory mitigation area; and
- (k) Submit a plan for the stewardship of the property in accordance with Env-Wt 807.14.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

PART Env-Wt 805 WETLAND RESTORATION OR CREATION

Env-Wt 805.01 Wetland Restoration or Creation.

(a) A compensatory mitigation proposal based on wetland restoration or creation shall replace the types of wetlands to be impacted and the functions affected and shall include, where practicable, the provision for a contiguous upland buffer.

(b) Wetland restoration or creation proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 805.02 Criteria for Evaluation. To propose compensatory mitigation based on wetland restoration or creation, the applicant shall:

- (a) Give preference to wetland restoration over wetland creation;
- (b) Submit a functional assessment in accordance with Env-Wt 803.01(b) of the impacted jurisdictional area(s) and the proposed mitigation site(s);
- (c) Have the wetland delineation prepared by a certified wetland scientist in accordance with Env-Wt 301.01;

- (d) Identify and evaluate the potential for occurrence of rare or special concern species, state or federally listed threatened or endangered species, species at the extremities of their ranges, migratory species, and exemplary natural communities identified by the DRED-NHB;
- (e) Include connections to wetlands, surface waters, or associated upland wildlife and vegetated corridors to enhance the wetland or surface water use and colonization by native flora and fauna;
- (f) Identify the source of wetland hydrology for the proposed mitigation area to confirm that the site has a suitable geomorphic setting for aquatic resource restoration or creation;
- (g) Explain how the proposal creates hydrologic conditions or land connections that will produce the desired wetland functions and values to be restored or created;
- (h) Provide wetland micro and macro topography in the proposal to achieve hydrologic diversity;
- (i) Identify the relationship of the proposed mitigation site to any jurisdictional area(s) in the immediate vicinity, the proximity to existing infrastructure and adjacent properties, and whether any lands are protected in the vicinity of the mitigation site(s);
- (j) Provide documentation on how the proposed wetland restoration and creation site will not be affected by anticipated secondary and cumulative impacts from the construction site;
- (k) For restoration proposals, explain the history of the filled or disturbed area, to the extent known;
- (l) Include plans prepared in accordance with Env-Wt 805.03; and
- (m) Include a report describing how annual monitoring will be conducted following construction of the mitigation site(s), identifying the name of the qualified professional responsible for monitoring, proposed measures of success, and the remedial measures to be taken during construction and after completion of the project to promote success of the mitigation area.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 805.03 Plans for Wetland Restoration or Creation Projects. The applicant shall include the following in the plans required by Env-Wt 805.02(1):

- (a) Existing and proposed grades, with critical and typical cross sections showing:
 - (1) Existing and proposed grades;
 - (2) Predicted water fluctuations; and
 - (3) Proposed wetland cover types for the mitigation area;
- (b) Construction procedures and timing as follows:
 - (1) The name of the qualified professional responsible for oversight of the mitigation work;
 - (2) The proposed contingency measures for unexpected issues; and
 - (3) The timing and sequence of events;
- (c) A planting proposal, with preference given to native wetland plants and natural communities with

localized genetic material, as follows:

- (1) Plant species and quantities;
 - (2) Source of planting materials or whether the plan relies on natural re-vegetation;
 - (3) Plant stock size and zones of predicted plant occurrence;
 - (4) Plant survival goals;
 - (5) The proposed locations of native plant stock and the rate and type of seeding;
 - (6) When and where seeding or planting will take place; and
 - (7) Notation of dead snags, tree stumps, or logs per acre, where appropriate, to provide structure and cover for wildlife and food chain support;
- (d) Documentation of existing and proposed soils as follows:
- (1) The existing soils on the proposed mitigation site;
 - (2) The source of soils to be placed on the site;
 - (3) The likely seed bank composition of soils;
 - (4) The depth of proposed growing medium; and
 - (5) The soil properties such as texture and organic content;
- (e) Erosion control notes and details to minimize or prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (f) Invasive species in the vicinity;
- (g) If applicable, an invasive species control plan; and
- (h) Activities that will be allowed and not allowed within the restoration or creation area.

Source. #8911, eff 6-20-07

PART Env-Wt 806 REQUIREMENTS UPON PERMITTING

Env-Wt 806.01 Notification of Construction Completion. Within 60 days of completing a mitigation project that included restoration or creation of wetlands, the applicant shall:

- (a) Submit a signed letter specifying the date of completion and the anticipated dates of submittal of the annual monitoring reports; and
- (b) Submit a post-construction monitoring report, documenting the conditions of the restored or constructed wetland.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.02 Annual Monitoring Report.

(a) The permittee on a project for which mitigation includes wetlands restoration or creation, or both, shall submit an annual monitoring report to the department each year on the date specified in the permit for the time period specified in (b), below.

(b) The annual monitoring report shall document that the hydrology of the mitigation site(s) is appropriate and the area has a 75% success rate of coverage of non-invasive hydrophytic vegetation after 3 full growing seasons following completion of the mitigation work or following additional remedial measures taken as identified in Env-Wt 806.03.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.03 Implementation of Remediation Plan.

(a) If an annual monitoring report shows that the wetland restoration or creation area does not have at least 75% coverage of non-invasive hydrophytic vegetation, the permittee shall submit a remediation plan to the department within 45 days of the submittal of that annual monitoring report.

(b) The remediation plan shall identify:

- (1) The problem(s) limiting the success of the mitigation site;
- (2) Measures which need to be taken to address the problem(s); and
- (3) A time schedule on which the permittee will implement the corrective measures.

(c) The department shall approve the proposed remediation plan if the department determines that the plan has a reasonable probability, within 3 full growing seasons following implementation of the remediation plan, of resolving the problem(s) that have caused the restoration or creation to be unsuccessful.

(d) Following department approval of the remediation plan, the applicant shall implement the plan and submit annual reports for the next 3 full growing seasons to demonstrate the success of the remedial measures.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.04 Notification of Recorded Conservation Interest.

(a) After the department has issued a permit in accordance with Env-Wt 500 and prior to work commencing on a project for which the mitigation plan requires a conservation interest to be acquired, the permittee shall:

- (1) If the conservation interest is an easement, obtain the signature of the grantee on the document conveying the interest for each parcel to be preserved;
- (2) Record each document that conveys a conservation interest for each parcel to be preserved at the registry of deeds for the county in which the parcel is located;
- (3) Submit a copy of each recorded document to the department; and
- (4) Submit a digitized polygon file, if available, to be incorporated into the department's geographic information system (GIS) conservation lands layer for the location of compensatory mitigation parcels.

(b) Within 60 days after issuance of the permit, the permittee shall submit verification that the compensatory mitigation area has been marked by permanent monuments and signs indicating the location of the area.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 806.05 Submittal of In-Lieu Fee Payment.

(a) For a project for which the department has notified the applicant of the acceptance of a proposed in-lieu fee payment as specified in Env-Wt 803.08(c), the department shall not issue the permit until the applicant has paid the full amount of the in-lieu fee payment as specified in the notice.

(b) If the applicant does not pay the full amount of the in-lieu fee payment within 120 days of the date of the notice, the department shall deny the application.

(c) The department shall deposit all in-lieu fee payments into the aquatic resource compensatory mitigation fund established by RSA 482-A:29. For each payment deposited, the department shall credit the payment to the watershed that contains the jurisdictional area(s) impacted by the project. For a project that impacts jurisdictional area(s) in more than one watershed, the payment shall be allocated among the watersheds in proportion to impacts.

Source. #8911, eff 6-20-07

PART Env-Wt 807 AQUATIC RESOURCE COMPENSATORY MITIGATION FUND

Env-Wt 807.01 Definitions. For purposes of this part, the following definitions shall apply:

(a) “HUC 8 watershed” means the hydrologic unit code 8 watershed as developed by the U. S. Geological Survey (USGS);

(b) “Public roadway” means a roadway that is owned and maintained by the state or a political subdivision; and

(c) “Public utility project” means a project undertaken by an entity that is regulated by the New Hampshire public utilities commission.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.02 Use of Aquatic Resource Compensatory Mitigation Fund. Costs of the following activities shall be deemed to be “costs related to wetlands creation or restoration, stream restoration, preservation of upland areas adjacent to wetlands, and the subsequent monitoring and maintenance of such areas” and so eligible under RSA 482-A:29, I, for funding from the aquatic resource compensatory mitigation fund (“ARM Fund”):

(a) Development of final wetland restoration or creation plans;

(b) Construction costs for wetland restoration or creation such as site clearing and excavation, construction management, consulting fees, permit costs, wetland grading and soil augmentation, disposal costs of excavated materials, planting, and monitoring and maintenance of wetland restoration or creation sites to reduce risk of failure;

- (c) Acquisition of land for the protection of mitigation sites in perpetuity and associated costs including property surveys, appraisals, closing costs, and subdivision fees;
- (d) Acquisition of conservation interests after a qualified grantee has been identified;
- (e) Acquisition of legal services related to the protection of land(s) in perpetuity;
- (f) Stewardship of a conservation interest in accordance with Env-Wt 807.14; and
- (g) Other aquatic resource improvement or protection projects, such as water quality improvement projects, tidal wetland restoration projects, dam removal projects, stream or river restoration projects, or activities that provide habitat improvement including culvert replacement or removal.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.03 Identification of Eligible Projects.

(a) The department shall announce a request for applications for eligible projects in a HUC 8 watershed, in consultation with the site selection committee per Env-Wt 807.16(b)(4), at least once every 2 years following receipt of a payment for that watershed.

(b) To have a project considered for funding, an applicant shall complete an ARM Fund application in accordance with Env-Wt 807.04 and submit it to the department for review.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.04 Requirements for ARM Fund Applications.

(a) To request funding for an eligible project, the applicant shall complete the ARM Fund application form obtained from the department.

(b) The applicant and landowner(s) shall sign and date the application form. Such signatures shall constitute certification that the information provided is true, complete, and not misleading to the knowledge and belief of the signer.

(c) The applicant shall submit the following with the application form:

(1) A USGS topographic map on which the following areas are shown:

- a. The property or portion(s) of the property to be acquired or otherwise protected through a conservation interest with the requested funds, if applicable;
- b. The property or portions of the property to be considered for wetland restoration or creation, if applicable; and
- c. Any other protected lands within one mile of the outer boundaries of the area identified pursuant to a. or b., above;

(2) A description of the property(ies) that includes:

- a. The location and type of all structures;
- b. Existing impoundments, if any;

- c. Existing disturbances, if any; and
 - d. Known or potential contamination sources as identified in the department's GIS, if any;
- (3) A functional assessment or a description of the aquatic resource functions and values of the property(ies) and overall conservation value;
- (4) A map, at a scale that ensures that all details are legible, on which are identified all developed and undeveloped parcels within one-half mile of the outer boundaries of the area that would be restored, created, or protected by the proposed project;
- (5) A map of the property, at a scale that ensures that all details are legible, on which are identified the following:
- a. Wetlands, surface waters, fields, and forest;
 - b. Any structures;
 - c. All utilities and wells;
 - d. All roads or trails;
 - e. All easements or rights-of-way; and
 - f. Gravel pits or other disturbed areas;
- (6) For a restoration or creation project, a description of restoration or creation work to be completed and the total acreage of the area proposed for restoration or creation that shows the project meets the criteria specified in Env-Wt 807.06;
- (7) For an upland preservation project:
- a. The total acreage of the land proposed for protection and the acreage of any included jurisdictional area(s); and
 - b. A narrative that shows the project meets the criteria specified in Env-Wt 807.07;
- (8) For other projects, an explanation of why the project is eligible under Env-Wt 807.02;
- (9) A signed and dated statement from each landowner stating the landowner's willingness to have the restoration or creation work performed or willingness to negotiate the acquisition of the properties, as applicable;
- (10) A signed and dated statement by the landowner(s) that:
- a. Commits the landowner(s) to not selling or otherwise conveying or committing to sell or otherwise convey the property covered by the application except to the applicant for 120 days;
 - b. Commits the landowner(s) to allowing inspection, survey, and appraisal of the property within 120 days from the date of receipt of a copy of the application by the department;
 - c. Specifies the price at which the landowner will sell the property, which information shall be treated as confidential under the provisions of RSA 91-A:5, IV and subject to disclosure only with the consent of the landowner until the department has selected the application for

funding; and

d. Identifies all liens and encumbrances; and

(11) A budget that includes a complete list of itemized costs and an anticipated time line for expenditures.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.05 Processing of ARM Fund Applications.

(a) The department shall review each application for conformance with the requirements of Env-Wt 807.04 and to determine whether the project meets the criteria of Env-Wt 807.06 or Env-Wt 807.07, as applicable.

(b) The department shall notify the applicant and the municipality(ies) in which the land is located in writing of its decision on the application. If the application is determined to not be acceptable for funding, the notice shall specify the reason(s) for the determination.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.06 Eligibility Criteria for Wetland Restoration or Creation Projects. A project to restore or create wetlands shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant provides a signed and dated statement from a New Hampshire state natural resource protection or management agency, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, or the U.S. Natural Resource Conservation Service, endorsing the project or committing to provide technical support for the work or financial support for the project;

(b) The applicant provides:

(1) Information on how the wetland restoration or creation area will be acquired; or

(2) Written permission signed by the landowner and notarized giving the applicant permission to perform the wetland restoration or creation work;

(c) The applicant provides a list of all needed local, state, and federal authorizations or permits to conduct the wetland restoration or creation work that have been applied for, will be applied for, or have already been acquired; and

(d) The wetland restoration or creation area to be acquired is undeveloped land and free of known and potential contamination sources that are known to the applicant or identified in the department's GIS.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.07 Eligibility Criteria for Land Protection Projects. A project to acquire a conservation interest shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant is a political subdivision, a governmental agency, or a non-profit, 501(c)(3)

organization having land conservation as a principal mission, or provides a signed and dated statement from such an entity stating the willingness of the entity to negotiate the proposed acquisition;

(b) The conservation interest to be acquired meets the criteria specified in Env-Wt 804.01 and Env-Wt 804.03;

(c) The conservation interest to be acquired is in undeveloped land that is free of known contamination;

(d) The conservation interest to be acquired is in land that is not already permanently protected and is not currently owned by the applicant; and

(e) The conservation interest to be acquired will be held by a grantee that meets the criteria specified in Env-Wt 501.06(c).

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.08 Requirements upon Determination of Eligibility.

(a) If a project is selected to receive funding for the restoration or creation of wetlands, the applicant shall submit the following to the department prior to the funds being awarded:

- (1) An environmental site assessment prepared in accordance with Env-Wt 807.09(b) through (d), if required pursuant to Env-Wt 807.09(a);
- (2) A property survey prepared in accordance with Env-Wt 807.10;
- (3) Detailed plans on the restoration or creation site in accordance with Env-Wt 805.03; and
- (4) A detailed schedule for restoration or creation work to be carried out.

(b) If a project to conduct wetland restoration or creation is awarded funding, the applicant shall:

- (1) Select a qualified contractor using the procurement process prescribed by RSA 21-I:22, IV - VII;
- (2) Execute the wetland restoration or creation plan in accordance with the schedule approved by the department;
- (3) Adhere to ARM Fund contract conditions;
- (4) Provide ongoing monitoring reports in accordance with Env-Wt 806.02; and
- (5) Provide a plan for the on-going maintenance or management of the restored or created wetlands, if needed.

(c) If a project is selected to receive funding to acquire a conservation interest, the applicant shall submit the following to the department prior to the funds being awarded:

- (1) An environmental site assessment prepared in accordance with Env-Wt 807.09(b) through (d), if required pursuant to Env-Wt 807.09(a);
- (2) A property survey prepared in accordance with Env-Wt 807.10;

- (3) An appraisal prepared in accordance with Env-Wt 807.11;
 - (4) A title examination and, if necessary, an opinion of title prepared in accordance with Env-Wt 807.12; and
 - (5) Baseline documentation in accordance with Env-Wt 807.14(c)(1).
- (d) If a project to acquire a conservation interest is awarded funding, the applicant shall:
- (1) Execute the land transaction in accordance with Env-Wt 807.15;
 - (2) Record the deed and survey, if applicable, in accordance with Env-Wt 807.15;
 - (3) Adhere to ARM Fund contract conditions; and
 - (4) Provide a stewardship plan for the property in accordance with Env-Wt 807.14.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.09 Environmental Site Assessment Requirements.

(a) The applicant shall submit an environmental site assessment for any property that is the subject of a request for funding from the ARM Fund and that, based on information in the department's GIS or a site walk performed by the department, contains known or potential sources of contamination.

(b) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.

(c) An environmental site assessment shall include the following:

- (1) A history of land usage;
- (2) A description of the site inspection;
- (3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;
- (4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;
- (5) A description of the findings from any files reviewed pursuant to (3), above; and
- (6) An opinion by the consultant that there are no contamination concerns for the property(ies) proposed for protection.

(d) The applicant shall submit the environmental site assessment to the department upon completion.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.10 Survey Requirements.

(a) If an accurate survey does not already exist for property that is the subject of a request for funding from the ARM Fund, the applicant shall obtain a property survey after the applicant receives notification from

the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The applicant shall provide the department with 2 paper copies, a mylar copy suitable for recording at the registry of deeds, and a digitized polygon file of the standard property survey for the property that is the subject of the proposed project.

(c) A New Hampshire licensed surveyor shall perform a standard property survey in accordance with the standards specified in Lan 503.03 – Lan 503.10.

(d) The turning points of the boundaries shall be marked with permanent monuments and the boundary lines shall be blazed or painted so that they can be located in the field.

(e) The survey plan shall include:

- (1) The property boundaries and acreage; and
- (2) The method and accuracy of the survey.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.11 Appraisal Requirements.

(a) The applicant requesting funding from the ARM Fund for acquisition of a conservation interest shall obtain an appraisal or an updated appraisal after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) If an appraisal has not been completed within 120 days of the notification, the money will revert back to the ARM fund.

(c) An appraisal shall be conducted for each property included in the proposed project, based on the terms of the proposed conservation interest instrument and the survey performed in accordance with Env-Wt 807.10.

(d) The appraisal shall be conducted to determine the fair market value of the conservation interest in accordance with the Uniform Standards of Professional Appraisal Practice established by The Appraisal Foundation.

(e) The applicant shall submit the appraisal to the department.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.12 Title Examination Requirements.

(a) The applicant for funding from the ARM Fund for acquisition of a conservation interest shall obtain a title examination or an updated title examination after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The title examination shall be conducted for each property included in the proposed project.

(c) The title examination shall be conducted to ascertain that there is clear and marketable title to the property according to the “New Hampshire Title Examination Standards” of the New Hampshire Bar Association.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.13 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

- (1) Uphold the conservation purposes of the transaction in perpetuity;
- (2) Protect the quality of wetlands and surface water resources associated with the property;
- (3) Safeguard the environmental values of the property that are dependent on aquatic resources; and
- (4) Convey an interest to the State of New Hampshire that allows the state to enforce the conditions and restrictions of the easement and to recover the costs of such enforcement from the easement holder or property owner, or both.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

- (1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
- (2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except to the extent that they do not degrade the aquatic resource for which the project was funded and do not pose a risk of such degradation;
- (3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;
- (4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any allowed water supply, agricultural, forestry, or outdoor recreational activities, and provided the storage and use do not threaten aquatic resource protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
- (5) No acts or uses shall occur on the property that would:
 - a. Degrade wetlands or water quality;
 - b. Cause an unsustainable quantity of water to be withdrawn; or
 - c. Harm state or federally recognized rare, threatened, or endangered species; and
- (6) Activities specifically allowed by the instrument, such as community drinking water supply, agriculture, forestry and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions as set forth in the instrument, subject to such conditions as are specified in the instrument.

(d) In the case of a conservation easement, the owner of the fee shall retain all other customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions in the easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.14 Stewardship Requirements.

- (a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired.
- (b) The grantee shall determine the financial and management implications of each conservation interest and establish that it has or can obtain funds to monitor and enforce the interest.
- (c) To fulfill its obligations under (a), above, the grantee shall:
 - (1) Prior to acquisition of the conservation interest, prepare and submit to the department a baseline documentation report that describes, in writing and with photographs, the condition of the property(ies) that will be subject to the interest at the time of acquisition, including aquatic resource functions and values;
 - (2) Prepare and submit to the department an annual property inspection that confirms that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest;
 - (3) For conservation easements, contact landowners annually to inform the landowners of their obligations under the easement;
 - (4) Prepare and submit an annual stewardship report to the department that contains the following:
 - a. A description of the site inspection conducted;
 - b. A description of any physical changes to the property;
 - c. A description of any landowner contact conducted;
 - d. A description of any conditions that violate or may violate the intent of the conservation interest; and
 - e. A description, including current status, of any violations witnessed and remedial steps taken.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.15 Final Approval, Execution, and Deed Recordation.

- (a) The department shall approve the acquisition of a conservation interest if, for each property to be included in the conservation interest, the applicant:
 - (1) Confirms that the property is not contaminated in accordance with Env-Wt 807.09;
 - (2) Confirms the property boundaries and acreage in accordance with Env-Wt 807.10;

(3) Negotiates a price not to exceed the fair market value determined in accordance with Env-Wt 807.11;

(4) Confirms that there is clear and marketable title for the property determined in accordance with Env-Wt 807.12;

(5) Submits a deed that conforms to the requirements of Env-Wt 807.13; and

(6) Submits the baseline documentation prepared in accordance with Env-Wt 807.14(c)(1).

(b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after final approval.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.16 Site Selection Committee.

(a) The site selection committee for the ARM Fund shall be as specified in RSA 482-A:32.

(b) As specified in RSA 482-A:32, I, the purpose of the site selection committee is to identify projects to be funded from the ARM Fund. To accomplish this purpose, the site selection committee shall:

(1) Participate in meetings coordinated by the department to develop operating procedures for the committee and discuss operation of the ARM Fund;

(2) Provide guidance on the application ranking and selection criteria that will be used to rank parcels considered for funding;

(3) Provide contact information to the department for individuals or organizations that may be knowledgeable on issues or priorities within the HUC 8 watersheds for which requests for eligible projects were made pursuant to Env-Wt 807.03(a);

(4) Assist the department in determining dates to request applications to be submitted with specified deadlines for submittal;

(5) Oversee the ARM Fund to ensure that funds deposited are considered for disbursement within 2 calendar years from the date of deposit;

(6) Evaluate and rank applications in accordance with Env-Wt 807.17 and Env-Wt 807.18;

(7) Select the project(s) that will be recommended to the Wetlands Council for funding;

(8) Recommend an amount to be disbursed for each project selected; and

(9) Review the annual report prepared by the department pursuant to RSA 482-A:33.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.17 Application Ranking and Selection by the Site Selection Committee.

(a) Pursuant to RSA 482-A:32, for each application funding cycle, the site selection committee shall rank each project for which a request for ARM funding is received within 75 days after the application deadline for that cycle.

- (b) The ranking shall be based on a review of the applications and site walks conducted by the department.
- (c) The site selection committee shall rank the project(s) that are located in the same HUC 8 watershed as the impact areas that paid into the fund.
- (d) The site selection committee shall select projects that provide the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the HUC 8 watershed.
- (e) The site selection committee shall select projects that at a minimum meet or exceed the ratios listed in Table 800-1.
- (f) Where project scores are comparable, preference shall be given to projects that provide the longer term, more beneficial protection mechanism for the project area and its buffer.
- (g) To insure successful completion of the project, the site selection committee shall only consider applications for ARM funds that include a realistic budget to accomplish the proposed project's stated objectives and time frame.
- (h) The site selection committee shall select the highest ranked projects for each application cycle.
- (i) If the department announces a watershed account is ready to be spent and the submitted proposals do not address the priorities for the watershed, then the funds deposited in that account shall remain for another 2 years to be spent following a new application cycle.
- (j) Funds that remain in an account after the ARM fund applications have been selected for funding shall be carried over in that watershed account for the next application cycle.
- (k) Applications for ARM funds shall be evaluated based on the criteria and points specified in Env-Wt 807.18.

Source. #8911, eff 6-20-07

Env-Wt 807.18 Project Evaluation.

- (a) No more than 27 points shall be assigned based on the potential the project has to replace or protect wetland functions and values lost within the HUC 8 watershed, including those that have been identified by the site selection committee as priorities for the application cycle, as follows:
 - (1) If the application documents that the project will replace 80% or more of the wetland functions and values lost in the HUC 8 watershed, the project shall receive 20 to 27 points;
 - (2) If the application documents that the project will replace at least 50% but less than 80% of the wetland functions and values lost in the HUC 8 watershed, the project shall receive 13 to 19 points;
 - (3) If the application documents that the project will replace at least 30% but less than 50% of the wetland functions and values lost in the HUC 8 watershed, the project shall receive one to 12 points;
 - (4) The project shall receive one to 5 points if the application documents that the project will replace less than 30% of the wetland functions and values lost in the HUC 8 watershed but that it:
 - a. Will provide other important wetland functions and values; or

b. Is a component of a suite of projects to be funded during the current application cycle, which, when taken as a whole, will replace all functions and values lost in the watershed.

(b) No more than 27 points shall be assigned based on the overall environmental significance the project provides as follows:

(1) If the project is located within a source water protection area or overlays a high-yield stratified drift aquifer, the project shall receive one to 9 points;

(2) If the project will protect endangered, threatened or special concern species or exemplary natural communities documented to occur on the property, the project shall receive one to 9 points; and

(3) If the project is located in or in close proximity to NH Wildlife Action Plan highest quality wildlife habitat or NH Wildlife Action Plan conservation focal areas, the project shall receive one to 9 points.

(c) No more than 19 points shall be assigned based on the project's proximity and connectivity to the following resources as follows:

(1) If the project is adjacent to lands protected in perpetuity, the project shall receive 4 points;

(2) If the project provides a connection between lands that are currently unconnected and which are protected in perpetuity, the project shall receive one to 4 points;

(3) If the project will protect linkages or over-land connections among and between 1 or more aquatic resource areas, the project shall receive one to 4 points;

(4) If the project will protect lands within a large unfragmented block of land, relative to the HUC 8 watershed, the project shall receive one to 4 points; and

(5) If the project is located within the same sub-watershed as the impact area(s), the project shall receive 3 points.

(d) No more than 19 points shall be assigned based on the overall mitigation potential for the project to address the considerations noted below as follows:

(1) If the project will protect most or all of the aquatic resource, the project shall receive one to 6 points;

(2) If the project will provide an upland buffer that protects an aquatic resource identified as a prime wetland by a municipality or recognized in a municipal or regional wetland or natural resource study, the project shall receive one to 6 points;

(3) If the project will protect, at a minimum, a 100 foot upland buffer around most or all of the aquatic resource, the project shall receive one to 4 points; and

(4) If the project will protect most or all of the HUC 8 watershed of the aquatic resource, the project shall receive one to 3 points.

(e) No more than 8 points shall be assigned based on the cost-effectiveness of the project and partnership potential as follows:

(1) If the project will provide a cash or in-kind donation match of at least 10%, the project shall

receive 3 points;

(2) If the project area is identified in a federal, or state environmental priority plan other than the Wildlife Action Plan, the project shall receive one to 3 points; and

(3) If the project is supported by the host municipality, the project shall receive 2 points.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.19 Annual Report. The annual report prepared pursuant to RSA 482-A:33 shall include the following for the reporting period covered by the report:

(a) A summary that details the sources of all payments received and all fund expenditures on a per-watershed basis;

(b) A description of each project funded and information on the progress or completion of those projects;

(c) The acreage and type of aquatic resources restored, created, or otherwise protected in each HUC 8 watershed by the projects described pursuant to (b), above; and

(d) The functions gained by the projects described pursuant to (b), above.

Source. #8911, eff 6-20-07

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-Wt 101.01 - 101.08	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.09	RSA 482-A:2, VIII
Env-Wt 101.10 - 101.18	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.19	RSA 482-A:11, III
Env-Wt 101.20 - 101.21	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.22	RSA 21-O:5-a
Env-Wt 101.23 - 101.33	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.34 - 101.42	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.45	RSA 482-A:3, I
Env-Wt 101.46 - 101.76	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.77	RSA 482-A:2, VII
Env-Wt 101.78 - 101.85	
Env-Wt 101.86	RSA 482-A:2, IX
Env-Wt 101.87	RSA 482-A:1
Env-Wt 101.88	RSA 482-A:4
Env-Wt 101.89 - 101.98	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.99	RSA 482-A:2, X
Env-Wt 101.100 - 101.103	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 102.01	RSA 482-A:1
Env-Wt 102.02	RSA 91-A
Env-Wt 101.01 - 101.08	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.09	RSA 482-A:2, VIII
Env-Wt 101.10 - 101.18	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.19	RSA 482-A:11, III
Env-Wt 101.20 - 101.21	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.22	RSA 21-O:5-a
Env-Wt 101.23 - 101.25	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.26	RSA 482-A:1 and 3
Env-Wt 101.27 - 101.33	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.34 - 101.42	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.45	RSA 482-A:3, I
Env-Wt 101.46 - 101.69	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.70	RSA 482-A:1 and 3
Env-Wt 101.71-76	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.77	RSA 482-A:2, VII
Env-Wt 101.78 - 101.79	
Env-Wt 101.81 - 101.82	RSA 482-A:1 and 3
Env-Wt 101.83 - 101.85	
Env-Wt 101.86	RSA 482-A:2, IX
Env-Wt 101.87	RSA 482-A:1
Env-Wt 101.88	RSA 482-A:4
Env-Wt 101.89 - 101.98	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.99	RSA 482-A:1 and 3
Env-Wt 101.100 - Env-Wt 101.103	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 102.01	RSA 482-A:1

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Env-Wt 102.02	RSA 91-A
Env-Wt 201.01 - 201.02	RSA 482-A
Env-Wt 202.01 - 202.04	RSA 482-A:8
Env-Wt 202.05	RSA 482-A:8 and RSA 541-A
Env-Wt 203.01 - 203.02	RSA 482-A:10, I
Env-Wt 204.01 - 204.05	RSA 541-A:22, IV
Env-Wt 204.06	RSA 541-A:16, I(b)
Env-Wt 301.01	RSA 482-A:1, 3 and 4, II
Env-Wt 301.02	RSA 482-A:1 and 3
Env-Wt 301.02(c)	RSA 482-A:1, 3 and 4, II
Env-Wt 302.01 – 302.02	RSA 482-A:1 and 3
Env-Wt 302.03	RSA 482-A:1 and 3
Env-Wt 302.04	RSA 482-A:1, RSA 482-A:3, and RSA 482-A:11, II.
Env-Wt 302.04(a)(7)	RSA 482-A:1, 3 and 4, II
Env-Wt 304.05	RSA 482-A:1 and 3
Env-Wt 303.01 - 304.15	RSA 482-A:1 and 3
Env-Wt 303.05(e)	RSA 482-A:1 and 3
Env-Wt 401.01 - 402.01	RSA 482-A:1 and 3
Env-Wt 402.02	RSA 482-A:1 and 3
Env-Wt 402.03 - 402.05	RSA 482-A:1 and 3
Env-Wt 402.05(a) and (m) (renumbered as Env-Wt 402.06(a) and (m))	RSA 482-A:1 and 3
Env-Wt 402.06 – 402.16	RSA 482-A:1 and 3
Env-Wt 402.17	RSA 482-A:11, II and RSA 228-:57-a
Env-Wt 402.18 - 501.01	RSA 482-A:1 and 3
Env-Wt 501.02(a)(1), (3)-(5), (b)-(d)	RSA 482-A:1 and 3; RSA 482-A:11, II; and, RSA 477:47
Env-Wt 501.02(a)(2), (6)-(7)	RSA 482-A:1 and 3; RSA 482-A:11; and, RSA 477:28-33
Env-Wt 501.03 - 504.04	RSA 482-A:1 and 3
Env-Wt 501.05- 501.07	RSA 482-A:1 and 3; RSA 482-A:11; and, RSA 477:28-33
Env-Wt 505.01	RSA 482-A:1 and 3; RSA 482-A:11, III
Env-Wt 505.02 - 508.01	RSA 482-A:1 and 3
Env-Wt 508.02	RSA 482-A:1 and 3, RSA 541-A:30, RSA 482-A:8, RSA 482-A:10
Env-Wt 606.01 - 606.11	RSA 482-A:1 and 3
Env-Wt 701.01 - 704.02	RSA 482-A:1 and 3, RSA 482-A:15
Env-Wt 800	RSA 482-A:3, I; RSA 482-A:11, RSA 482-A:28-33